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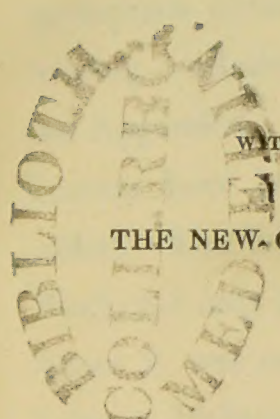
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A
PRACTICAL TREATISE OF THE LAW
CONCERNING
LUNATICS, IDIOTS,
AND
PERSONS OF UNSOUND MIND;
WITH
An Appendix of the Statutes
OF ENGLAND, IRELAND, AND SCOTLAND, RELATING TO SUCH PERSONS;
AND
FORMS OF PROCEEDINGS IN LUNACY.


The Second Edition,
WITH CONSIDERABLE ALTERATIONS AND ADDITIONS,
INCLUDING
THE NEW GENERAL ORDERS, STATUTES, AND DECISIONS.

BY
LEONARD SHELFORD, ESQ.,
OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

LONDON:
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TO THE

SECOND EDITION.



The Author has carefully revised the former Edition of this Work, and incorporated therewith the subsequent and important authorities relating to the law of Lunatics under the appropriate divisions. The Statutes of the United Kingdom, relating exclusively to Lunatics, are printed at length in the Appendix. Forms adapted to the new general orders in Lunacy have been introduced, and new Bills of Costs are added. The favourable reception of the first Edition of this Work, not only in England and Ireland, but also in America, where it was republished in the second volume of the Law Library, Philadelphia (*a*), was some satisfaction to the Author, although an inadequate compensation for the time bestowed upon it.—The Author entertains some confidence that this Edition will be found, on account of the new matter which it contains, and the pains bestowed upon its prepara-

(*a*) See Hoffman on Legal Study, 332, 2nd edition, and the English, Irish, and American Equity Reports.

tion, to be more worthy of the approbation of the Profession and of the Public than its Predecessor. The Introduction to the first Edition has been omitted, partly on account of the inconvenient length to which it would have extended the Work, but more especially because the Author could not conveniently devote sufficient time to writing upon such extensive subjects as medical jurisprudence, and the treatment of the insane, in such a manner as would be satisfactory to himself, or as their importance requires.

3, *Brick Court, Temple,*

4th Dec. 1846.

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ADDENDA ET CORRIGENDA.

P. 18, at end of second paragraph.]—The Lord Chancellor sitting in equity has no power to pronounce any decision upon the capacity or incapacity, of a party, and cannot confer any such power on the Master, where such decision is to be the ground of depriving a party of any part of his income. The question is to be determined on the common law side of the Court, under a commission and inquisition taken thereon. *Winthrop v. Winthrop*, 1 Coop. temp. Lord Cottenham, 196.

P. 129, at end of second paragraph.]—Before a lunatic is allowed to be taken out of the jurisdiction, security for his return to be approved of by the Master should be previously given. Such security must be available in England, and not such as can be enforced only in a foreign Court, and for such a purpose the Scotch Courts are considered foreign. *Re Stair*, 1 Coop. temp. Lord Cottenham, 227.

P. 167, before last line.] The tenth general order applies only to those cases in which it is plainly expedient that the Master should at once make the inquiries and report upon the matters therein mentioned. But particular inquiries, for instance, on the subject of the committee'ship, will be postponed when it is expedient so to do. *Re Westbrook*, 1 Coop. temp. Lord Cottenham, 224.

P. 177, at end of first paragraph.]—The appointment of a stranger as committee of the person and estate of a lunatic who has relations, will not be made unless there be proof of the necessity of excluding the lunatic's relations. *Re Watkins*, 1 Coop. temp. Lord Cottenham, 225.

P. 218, at end of second paragraph.]—Where a husband had expended money beyond what was needful for the ordinary main-

tenance of his wife, a lunatic, but against whom no commission had issued, the Court refused to direct a sale of any portion of the *corpus* of her property for reimbursing the husband ; but allowed him to receive the whole of the annual income, though exceeding the amount required for the wife's actual maintenance, but a sufficient portion of the *corpus* was ordered to be sold to pay the costs of the suit and the legacy duty. *Edwards v. Alvey*, 10 Jur. 650.

P. 259, at end of first sentence.]—The Act 9 & 10 Vict. c. 101, has authorized the advance of public money to a limited amount, to promote the improvement of land in Great Britain and Ireland by public works. The powers of the act are to be executed by the inclosure commissioners in England, s. 9, and by the commissioners of public works in Ireland, s. 10. The act contains fifty sections.

All committees, tutors and curators, for and on behalf [*inter alios*,] lunatics, idiots, or fatuous or furious persons, and all feoffees and trustees, judicial factors, executors and administrators, shall respectively have the same rights and powers of making applications and signifying dissents under that act as such lunatics, idiots, or fatuous or furious persons respectively would have had if free from disability, but no such committee, &c., shall be in anywise concerned or obliged to signify a dissent to an application under that act, or be in anywise responsible for the consequences of such application, or of the charge made in pursuance thereof. 9 & 10 Vict. c. 101, s. 24.

P. 261, at end of second paragraph.]—By act 9 & 10 Vict. c. 73, where the amount of the rent-charge, instead of tithes, under any *confirmed* agreement or award shall not exceed 15*l.*, and the apportionment thereof shall not have been confirmed, the owner of the land chargeable therewith, with the consent of the person entitled to the receipt thereof, or in case of a *lunatic* with the consent of his committee of his estate, may redeem such rent-charge on payment, in manner thereafter mentioned, within such time as the tithe commissioners shall in such case limit in that behalf, of a sum not less than twenty-four times the amount of such rent-charge. 9 & 10 Vict. c. 73, s. 2, the act contains twenty-four sections.

P. 275, at end of third paragraph.]—The general rule has been reiterated, that the committee of a lunatic's estate, who exceeds his authority in the expenditure of money, shall himself pay the costs of the additional reference thereby occasioned. *Re Langham*, 1 Coop. temp. Lord Cottenham, 228.

P. 355, for the second paragraph substitute the following.]—By establishing the principle, that while the relation of client and attorney subsists in its full vigour, the latter shall derive no benefit for himself from the contracts or bounty, or other negotiations of the former ; it supersedes the necessity of any inquiry into the particular

means, extent, and exertion of influence in a given case ; a task often difficult and ill supported by evidence, which can be drawn from satisfactory sources. 1 Story Eq. Jurisp. pl. 311, p. 250. *Wells v. Middleton*, 1 Cox, 125. *Cheslyn v. Dalby*, 2 Y. & Coll. 194, 195. *Hunter v. Atkins*, 3 My. & K. 11.

P. 410, n. (d). In the case of *Allen v. Macpherson*, there was an appeal to the House of Lords, but the consideration of such case (which was appointed for 28th August, 1846), was postponed *sine die*. Minutes of proceedings H. L. 28 August, 1846.

P. 459, at end of first paragraph.—Where the lunatic's property is small, and the income not more than sufficient for his maintenance, no order for satisfaction of a liability of the lunatic will be made until it appears that after the proposed payment enough will remain for his proper support. *Re Adey*, 1 Coop. temp. Lord Cottenham, 225.

P. 745, note to sect. 58.] The act to amend the laws relating to the removal of the poor, provides that no person shall be removed, nor shall any warrant be granted for the removal of any person, from any parish in which such person shall have resided for five years next before the application for the warrant, provided always that the time during which such person (*inter alia*), shall be confined in a lunatic asylum or house duly licensed, or hospital registered for the reception of lunatics, or as a patient in a hospital or during which any such person shall receive relief from any parish, or shall be wholly or in part maintained by any rate or subscription raised in a parish in which such person does not reside, not being a *bonâ fide* charitable gift, shall for all purposes be excluded in the computation of time hereinbefore mentioned, and that the removal of a pauper lunatic to a lunatic asylum under the provisions of any act relating to the maintenance and care of pauper lunatics shall not be deemed a removal within the meaning of that act. 9 & 10 Vict. c. 66, s. 1.

PRACTICAL TREATISE

ON

The Law concerning Lunatics,

&c. &c. &c.

CHAPTER I.

OF THE LEGAL TERMS RESPECTING PERSONS UNDER
MENTAL DISABILITIES.

THE terms used in the statute law of England, to include persons under mental disabilities, have been various.

The general term which, in days now remote, was commonly applied to such persons, both by the common and statute law, was "*non compos mentis*," which, according to Sir *Edward Coke*, is the most legal (*a*).

Compos signifies, one that hath obtained, or is master of his desire or purpose; and in some classical Roman authors (*b*), *compos animi et compos mentis*, mean "one in his senses;" the term "*non compos mentis*" was adopted by the law of England at a remote period to signify a person "out of his senses."

The term *non compos mentis* is used in the statute *de prærogativâ regis* (*c*), and also in several subsequent acts of Parliament (*d*); and it was said by Lord *Hardwicke*,—being *non compos mentis* "of unsound mind," are certain terms in law, and import a total deprivation of sense; but weakness

(*a*) Co. Litt. 246, a.

(*b*) Terent. Adelp. iii. 2, 12; Cic. 2 Phil. c. 38; Id. in Pison. c. 20, extr. Sallust in Fragm. Liv. l. 27, c. 5.

(*c*) 17 Edw. 2, c. 10.

(*d*) 23 Eliz. c. 3; 21 Jac. 1, c. 16;

4 Geo. 2, c. 10; 26 Geo. 2, c. 33, s. 12; 1 & 2 Geo. 4, c. 15; 4 Geo. 4, c. 76, s. 17; Irish stat. 11 Anne, c. 3; 5 Geo. 2, c. 8.

does not carry that idea along with it; but Courts of law understand what is meant by *non compos*, or insane, as they are words of a determinate signification (*d*).

Sir *E. Coke* makes four classes of such persons—1st, idiot, or fool natural, who from his nativity by a perpetual infirmity is *non compos mentis*: 2nd, a person who was of good and sound memory, and by sickness, grief, or other accident, wholly loses his memory and understanding: 3rd, a lunatic, *lunaticus*, who has sometimes his understanding and sometimes not, *qui gaudet lucidis intervallis*, and therefore he is called *non compos mentis* so long as he has not understanding: and 4th, a person who by his own vicious act for a time deprives himself of his memory and understanding, as he that is drunken; but such a person has no privilege by this voluntary contracted madness (*e*). Yet, if a person by the unskilfulness of his physician, or by the contrivance of his enemies, eat or drink such a thing as causes temporary or permanent phrensy, this puts him in the same condition in reference to crimes as any other phrensy, and equally excuses him; and also, if, by one or more such practices, an habitual and fixed phrensy be caused, though this madness was contracted by the vice and will of the party, yet it puts the party in the same condition in relation to crimes, as if it had been contracted involuntarily at first (*f*). So drunkenness is often taken into consideration in deciding upon the intention of the offender. (*ff*)

The word idiot is derived from the Greek word *idios privatus*, and signified a private man, who has not any public office. Among the Latins, *idiotus* is taken for illiterate, or foolish (*g*), and in Cicero and other authors signifies commonly an unlearned and illiterate person. With the English jurists, however, idiot is a legal term, signifying a person who has been without understanding from his nativity, and whom the law therefore presumes never likely to attain any (*h*).

(*d*) *Ex parte Barnesley*, 3 Atk. 173. See 2 Eq. Cas. Abr. 580.

(*e*) Co. Litt. 247, a.; 4 Rep. 124, b.; 4 Bl. Comm. 25.

(*f*) 1 Hale's P. C. 32.

(*ff*) 1 Russ. C. & M. 8, 3rd ed.

(*g*) 4 Rep. 128; See Du Cange's Glossary, tit. "*Idiota*."

(*h*) Co. Litt. 246, b., 247, a.; 3 Mod. 44; 4 Rep. 126; 1 Bl. Comm. 302.

Fitzherbert defines an idiot from birth to be a person who cannot count or number twenty pence, nor tell who was his father or mother, nor how old he is, &c., so as it may appear that he hath no understanding of reason what shall be for his profit, or what for his loss: but if he have sufficient understanding to know and understand his letters, and to read by teaching or information of another man, then it seems he is not an idiot (*i*).

In a recent case in the House of Lords, Lord *Tenterden*, C. J., is reported to have said, in allusion to the above definition of Fitzherbert, the strict legal definition of an idiot is, that if a man can repeat the letters of the alphabet, or read what is set before him, he cannot be taken to be an idiot. But that was contrary to common sense, for, as to repeating the letters of the alphabet, or reading what is set before him, a child of three years old may do that (*k*).

Although a person has a weak mind, yet, if he appears to be capable of acquiring by conversation and instruction a competent share of understanding to enable him to govern himself or his estate, and a memory sufficient to retain the knowledge which he may so acquire, he is not considered in law an idiot, or a person of unsound mind (*l*). Persons born deaf, dumb, and blind, are looked upon by the law as in the same state with idiots; for, the senses being the only inlets of knowledge, and these most important inlets being closed, all ideas and associations belonging to them are totally excluded from their minds, and they are incapable of executing a deed or will (*m*).

But persons deprived of only one or two senses, and who can express their meaning by writing or signs, are not incapacitated on that account (*n*). A man deaf and dumb from his birth, is in presumption of law an idiot, and the rather because he has no possibility to understand what is forbidden by law to be done, or under what penalties; but if it can appear that

(*i*) Fitz. N. B. 583, ed. 1652.

522. See 2 Eq. Cas. Abr. 581.

(*k*) *Ball v. Mannin*, 1 Dow. P. C. New Ser. 392; S. C. 3 Bligh, New Ser. 1.

(*m*) Co. Litt. 42, b.; Perk. s. 25; Dyer, 56, a.; Com. Dig. Capacity (D. 4); 2 Bl. Com. 497.

(*l*) Lord *Ely's* case, 1 Ridg. P. C.

(*n*) *Elliot's* case, Carter, 53.

he has the use of understanding, which many of that condition discover by signs to a very great measure, then he may be tried and suffer judgment and execution, though great caution is to be used therein (*o*). So a person born deaf and dumb is not on that account incapacitated to execute a deed or will if he has sufficient understanding to give evidence of his assent, either by his own signs, or by signs with the assistance of an interpreter (*p*). There is no doubt that many deaf and dumb persons who have received the benefit of the modern mode of instructing them can understand what they read and write, and are fully capable of performing legal acts.

A person born deaf and dumb having attained the age of twenty-one years, applied to the Court of Chancery for possession of her real estate, and to have an assignment of her chattel estate; and the Lord Chancellor having put questions to her in writing, to which she gave sensible answers in writing, the same was ordered accordingly (*q*).

Lunatic is a technical term, coined in ignorant times, and is derived from the Latin word *luna*, in respect of lucid intervals which lunatics are usually in the enjoyment of, *quia lucidis intervallis gaudent*; or in consequence of a notion formerly prevalent, that the moon has an influence upon mental disorders (*r*). The term signifies, in its legal acceptation, one who has had understanding, but, by disease, grief, or other accident, hath lost the use of his reason. A lunatic is properly one who has lucid intervals, sometimes enjoying his senses, and sometimes not (*s*).

(*o*) 1 Hale's P. C. p. 34; see 1 Russ. on Crimes, p. 7, note (*f*).

The judicious and humane means adopted in modern times for educating persons born deaf and dumb, have been attended with eminent success, and furnished them with many ways of profitable occupation, and endowed them with many of the privileges and consequent responsibility of rational and moral agents. See the interesting article "Deaf and Dumb," in Vol. 7 of Encyc. Britt., 7th ed., and in 3rd

Vol. of Supplement to 6th ed.; Stew. Phil. Vol. 3, p. 401.

(*p*) Ruston's case, 1 Leach's Cr. C. 455.

(*q*) *Dickenson v. Blissett*, 1 Dick. 268.

(*r*) 3 Atk. 174; Hale's P. C. 31. See Du Cange's Glossary, tit. "*Lunaticus*," and an elegant Latin treatise *De imperio solis ac lunæ in humana corpora, et morbis inde oriundis*, by the late Dr. Mead.

(*s*) 4 Co. 123; 1 Bl. Comm. 304.

It is singular, that the term "*Lunaticus*," which, though derived from a vulgar error, gives the title to the modern proceeding by commission, and is the only specific description of afflicted persons contained in it, is not to be found in any form of old writ (*s*), nor in the statute *de prærogativâ regis*.

The words *unsound mind*, and *unsound memory*, have been adopted in several statutes, and sometimes indiscriminately used to signify, not only lunacy, which is a periodical madness, but also a permanent adventitious insanity as distinguished from idiocy (*t*).

The term *unsound mind* seems to have been used in those statutes, and by Lord *Hardwicke*, in the same sense as insane; but a greater latitude appears to have been given to the meaning of those words by Lord *Eldon*, who said that they imported that the party *was in some such state* as was contra-distinguished from idiocy and from lunacy, and yet such as made him a proper subject of a commission to inquire of idiocy and lunacy (*u*).

And accordingly, if a jury find a party to be of unsound mind, and incapable of managing his affairs, it is held a sufficient finding to support a commission of lunacy.

It is to be lamented, that the original meaning of the term "*unsound mind*" should have been departed from, and that so much latitude and uncertainty should have been given to it as are implied by the words of Lord *Eldon*, last quoted—For if unsound mind does not mean a deprivation of reason, but a degree of weakness, and the Crown can issue commissions to try whether a party be of sufficient understanding to manage himself and his affairs, this is such a vague and uncertain ground for inquiry as will open a door to invade the liberty of the subject and the rights of property.

It was held by Lord *Redesdale* that the words "*non sane memory*" used in the Irish statute, 7 Geo. 2, c. 14, include

(*s*) Reg. Brev. 266; see 12 Ves. 450, 2nd ed. note (11).

(*t*) Lord *Ely's* case, 1 Ridg. Parl. Cas. 518; 3 Atk. 171; 39 & 40 Geo. 3, c. 94; 43 Geo. 3, c. 75; 6

Geo. 4, c. 74; 7 Geo. 4, c. 57, s. 73.

(*u*) *In re* the Earl of *Portsmouth*, 22nd April, 1815; see *post*, c. iv. s. 2.

every sort of person of such description, whether idiot or lunatic, or incapable of managing himself or his affairs (*v*).

The terms used in several modern acts of Parliament to signify persons under mental disabilities are—idiot, lunatic and of unsound mind.

The term *lunatic* only is used in the statutes of 11 G. 4 and 1 W. 4, cc. 60, 65; but, by the second section of each of those acts, containing rules for the interpretation of certain words employed in them, it is declared, that the word *lunatic* shall extend to any idiot, or person of unsound mind, or incapable of managing his affairs.

The word lunatic in the statutes for the regulation of the care and treatment of lunatics, and for the maintenance and care of pauper lunatics in England (8 & 9 Vict. c. 100, s. 114; c. 126, s. 84,) means every insane person and every person being an idiot or lunatic, or of unsound mind.

In the subsequent part of this work, the term *lunatic*, if not restricted by the context, is used in the same comprehensive sense as is given it by those statutes.

The term *partial insanity* imports that a person is insane on one or more particular subjects only, and sane in other respects (*w*).

As the term *imbecility of mind* often occurs in discussions respecting soundness of mind, and is intimately connected with this branch of the subject, the following judicious remarks of Sir John Nicholl (*x*) are deserving attention. He observed—"That, in order to arrive at the true meaning of 'imbecility of mind,' we may resort to what the law describes as perfect capacity, which is most correctly found in the form of pleadings used in the Ecclesiastical Courts, in the averment in support of a will, that the testator 'was of sound mind, memory, and understanding—talked and discoursed rationally and sensibly, and was

(*v*) *Carew v. Johnston*, 2 Sch. & Lef. 280.

(*w*) 1 Hale's P. C. 30; *Greenwood's case*, 13 Ves. 89; 3 Br. C. C. 444; *Dew v. Clarke*, 1 Add. 274;

S. C. 3 Add. 79; *Heath v. Watts*, Pr. 1798. Del. 1800. See *post*, ch. vii. sect. 6.

(*x*) 1 Hagg. Eccl. Rep. 401.

fully capable of any rational act requiring thought, judgment, and reflection.' Here is the legal standard.

"Imbecility and weakness of mind may exist in different degrees between the limits of absolute idiocy on the one hand, and of perfect capacity on the other. When the law uses the terms, 'mind, memory, understanding, thought, judgment, reflection,' it must not be supposed that they are quite synonymous; that each means precisely the same thing. By no means: they are separate faculties, though nearly connected with and graduating into each other; and one or more of these faculties may be defective in a greater or less degree, while the others remain perfect in the individual.

"Locke (*y*), speaking of idiots, says, 'Those who cannot distinguish, compare, and abstract, would hardly be able to understand and make use of language, or judge, or reason to any tolerable degree; but only a little and imperfectly about things present, and very familiar to their senses. And indeed, any of the forementioned faculties, if wanting, or out of order, produce suitable effects in men's understandings and knowledge.

"'In fine, the defect in naturals seems to proceed from want of quickness, activity, and motion in the intellectual faculties, whereby they are deprived of reason: whereas madmen, on the other side, seem to suffer by the other extreme, for they do not appear to have lost the faculty of reasoning: but having joined together some ideas very wrongly, they mistake them for truths, and they err as men do that argue right from wrong principles. For, by the violence of their imaginations, having taken their fancies for realities, they make right deductions from them.'

"In confirmation of this doctrine it is found, that different faculties fail in different persons. For example—the memory is sometimes perfect where higher powers of the understanding are greatly defective; when imbecility is original, or as medical authorities express it, *connate*, the memory is often perfect, especially of trifling and simple circumstances, though the other mental powers remain infantine; or, as the same authorities suppose and express it, 'the brain has never developed itself.'

(*y*) Essay on the Human Understanding, Book 2, ch. 11, sect. 12 & 13.

In such an individual the understanding has made little progress with years—it has not matured and ripened in the usual manner: yet, even in such individuals, unless the imbecility be extreme, some improvement will have taken place—some progress in knowledge beyond mere infancy will have been made by the help of memory, by imitation, by habit; such an individual will acquire many ideas, will recollect facts and circumstances and places, and hacknied quotations from books, will conduct himself orderly and mannerly, will make a few rational remarks on familiar and trite subjects, may retain self-dominion, and spend his own little income in providing for his wants, as a boy spends his pocket money, and yet may labour under great infirmity of mind and be very liable to fraud and imposition. The principal marks and features of imbecility are the same which belong to childhood, of course varying in degree in different individuals: frivolous pursuits, fondness for and stress upon trifles, inertness of mind, paucity of ideas, shyness, timidity, submission to control, acquiescence under influence, and the like. Hence these infantine qualities have acquired for this species of deficiency of understanding the name of ‘childishness.’ The effect is, that where imbecility exists at all, and in proportion to its degree, it becomes necessary, especially in a case exposed to other adverse presumptions, to ascertain its extent with some accuracy; to see how far the individual was liable to be controlled by influence, to submit to ascendancy, to acquiesce from inertness and confidence in those acts, upon the validity of which the Court has to decide (z).

(z) See *post*, ch. iii. vii.

CHAPTER II.

OF THE JURISDICTION RESPECTING LUNATICS, IDIOTS, AND PERSONS OF UNSOUND MIND.



SECTION I.—*Of the Prerogative of the Crown.*

II.—*Of the Jurisdiction of the Court of Chancery.*

III.—*Of the Jurisdiction in Scotland.*



SECTION I.

Of the Prerogative of the Crown.

THE sovereign is as *parens patriæ* or political guardian of the kingdom invested with a kind of guardianship over various classes of persons, including such as by reason of their imbecility and want of understanding, are incapable of taking care of themselves (*a*). The origin of the power of the Crown in this respect is at the present day more a matter of curiosity than of use.

The prerogatives of the Crown with respect to the custody of idiots and lunatics are not mentioned by Bracton; but we are informed by Fleta (*b*), that certain persons, called *tutores*, used to have the custody of the lands *idiotarum et stultorum*. It is thought that these tutors, as was natural, were the lords of whom the lands were holden; such unhappy persons being

(*a*) Saundf. de Pr. Reg. 33; Bligh. N. S. 348.
2 Inst. 14; 4 Rep. 126; Bacon's
Abr. tit. Idiots and Lunatics (C); (b) Fleta, p. 6; see Reeves's
Dyer, 25; 1 Bl. Comm. 303; 1 Hist. of English Law, 2 Vol. 307.

in a sort of perpetual infancy. But this sort of trust, according to Fleta, had been much abused; on which account an act had been made in the reign of Edward 1, which is now lost, giving to the King the custody of the persons and inheritances *idiotarum et stultorum*, being such *a nativitate*; with a reservation to the lord of all lawful claims for wards, reliefs, and the like (c).

In confirmation of the statute before mentioned, it was declared by the statute *de prærogativâ regis* (d), “that the King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessities, of whose fee soever the lands be holden. And after the death of such idiots, he shall render them to the right heirs: so that by such idiots no alienation shall be made, nor shall their heirs be disinherited.”

By the statute 32 Hen. 8, c. 46, which established the Court of Wards, it was declared, that the King’s wards and their lands should be under the survey and governance of that Court; and by the 26th section of the same statute, the persons and lands of idiots and natural fools were placed under the management of the Master of the Court of Wards. Upon the abolition of the Court of Wards (e), the care and custody of such persons and their estates reverted to the Crown.

The Crown, after a person has been found idiot by office, is entitled to the custody of the body of such idiot, and of his lands and goods, during his life, as well of those lands and other hereditaments which he takes by purchase, as by descent; but the freehold of them remains in the idiot, notwithstanding the right of the Crown to their custody (f). But if an idiot has not the possession of lands or goods, but only a title of entry, or right of action, the Crown cannot enter nor have the custody of them (g). The Crown may take the profits of an idiot’s estate to his own use, allowing necessities to him and his family, and making reparations, and may also demise the

(c) See 2 Inst. 14; 4 Rep. 125, b; Hob. 215.

(d) 17 Edw. 2, st. 2, c. 9.

(e) 12 Car. 2, c. 24.

(f) 4 Rep. 126; Staundf. de Pr. Reg. 34, 36.

(g) Staundf. de Pr. Reg. 35; Vin. Abr. tit. Lunatics, (B. 2), pl. 1.

lands of an idiot, rendering rent (*h*). So the Crown may grant the custody of an idiot, his lands and goods to another (*i*); and such grant may be made without security to account (*k*), and extend, as it seems, to the representatives of the grantee (*l*). The executors of an idiot are not entitled to have an account against the grantee for the profits incurred during the grant from the Crown (*m*).

Although the custody of idiots is still classed with the other branches of the ordinary revenue of the Crown, yet, it is said, that since the Revolution, the Crown has always granted the surplus profits of the estate of an idiot to some of his own family (*n*). It is believed, however, that it rarely happens that a jury finds a man an idiot *a nativitate*, but only *non compos mentis* (*o*). Although in all probability the Crown will not take advantage of a person being found an *idiot* by inquisition, yet in order to keep the practice regular petitions in the matter of a person found an idiot should be served on the Attorney-General (*p*).

Though the Crown may by *scire facias*, or by information, avoid all acts of an idiot done during his incapacity, yet its right to the mesne profits of his land has relation only to the time of the finding of the office, although, to avoid incumbrances created by an idiot, it shall have relation to the time of his birth (*q*).

From the manner in which Fleta expresses himself it should seem, that, in his time, there was no provision for the protection of the persons and estates of lunatics similar to that provided for idiots. But by the statute *de prærogativâ regis* (*r*), it is enacted, "that the King shall provide, when any (that before time hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands

(*h*) Staundf. de Pr. Reg. 35,
Moore, 4; Dyer, 26, a.

(*i*) 2 Ch. Cas. 70; And. 23.

(*k*) 3 Mod. 23.

(*l*) *Prodgers v. Lady Frazier*,
2 Ch. Cas. 70; 1 Vern. 9, 137.

(*m*) *In re Roberts*, 3 Atk. 312.

(*n*) 1 Ridg. Parl. Cas. 520.

(*o*) 1 Bl. Com. 302.

(*p*) *Ex parte Watson*, Jac. 161.

(*q*) *Tourson's case*, 8 Rep. 170;
F. N. B. 202.

(*r*) 17 Edw. 2, st. 2, c. 10.

and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the profits of the same; and the residue beyond their reasonable sustentation shall be kept to their use, to be delivered unto them when they recover their right mind: so that such lands and tenements shall in nowise within the time aforesaid be aliened; nor shall the King take any thing to his own use. And if the party die in such estate, then such residue shall be distributed for his soul by the advice of the ordinary."

It must be observed, that the words of the statute *de prerogativâ regis* (which is said (*s*) not to be introductive of a new right, but to be only declaratory of the common law, differ as to the provisions for the care of the property of an idiot and a lunatic. In the one case, the Crown, having an interest and personal benefit, is said to have the custody of an idiot, his lands, &c.; but with respect to lunatics, he is only to act as *parens patriæ*, as the person to take care of those who are incompetent to take care of themselves: the statute expressly providing, with respect to lunatics, that the Crown shall not take the profits of their lands for his own use; but is bound to find necessaries for them and their household (*t*); but as to what is not in itself profitable, as the presentation to a church, the Crown takes (*u*).

The statute then proceeds to direct, that, if the party shall die in this condition, the residue shall be distributed for the benefit of his soul, according to the superstition of the times in which the statute was made; which is certainly now (*v*) to be taken as a direction to preserve the residue for those entitled to the personal estate of the lunatic on his death, under the subsequent amendments of the law of administration. In the case of a lunatic, the Crown is a mere trustee; in the case of an idiot, he has a beneficial interest. In point of form, in the terms of the grant to the committee, the grant of a lunatic's

(*s*) 4 Rep. 126-7; 2 Ves. jun. 71.
But see 2 Inst. 14, *contra*.

(*t*) *Holmes's case*, Dyer, 25, b.

(*u*) Com. Dig. Idiot, (C).

(*v*) See statutes 31 Edw. 3, c. 11;
22 & 23 Car. 2, c. 10.

estate is a grant liable to account; and the other is a grant to a certain degree without account: that is, the Crown is not bound to do more than provide for the maintenance of idiots and is entitled by its prerogative to the surplus of their estates (*v*).

The case of a lunatic tenant in fee is not like that of tenant for life impeachable for waste; as the latter has no property in the timber, and therefore waste by him has a different consideration from that waste mentioned in the statute *de prerogativâ regis*, which only means without destruction; and the committee of the estate may be authorised by the Court to exercise the same powers with respect to felling timber as the lunatic could have done if in possession of his senses (*w*). An order for the committee to cut timber in a state of maturity was held to be perfectly right, being for the advantage of the lunatic and of the estate. The timber when mature was the fair fruit of the estate; and, instead of being waste and destruction to cut it, it would have been waste and destruction not to have done so (*x*).

Copyholds are not within the statute *de prerogativâ regis* (*y*).

With respect to the custody of copyhold lands of an idiot or lunatic, the lord has not any power over such lands except by special custom; in which case, if he appoint a committee, such person has no interest in the lands, but is considered as a bailiff, appointed by the lord to keep possession for the lunatic (*z*).

In the absence of special custom, it does not distinctly appear, who is entitled to the custody of the copyhold lands of an idiot or lunatic. It is laid down by Sir *E. Coke*, that the King shall not have the custody of land which an idiot holds by copy, for that is but an estate at will by the common law; and

(*v*) *In re Fitzgerald*, 2 Sch. & Lef. 436; 1 Fonbl. Tr. Eq. 56, 57, 3rd edit.; see *Wellesley v. Wellesley*, 2 Bligh, N. S. 129. 132.

(*w*) *Ex parte Bromfield*, 1 Ves. jun. 461; S. C. 3 Bro. C. C. 510.

(*x*) *Oxenden v. Lord Compton*,

4 Bro. C. C. 234; see *post*, ch. v. s. 10.

(*y*) 4 Rep. 126; Co. Cop. sect. 55; Bac. Abr. tit. "*Idiots and Lun.*" (C.); Watk. Gilb. Ten. 291. 400.

(*z*) *Cocks v. Darson*, Hob. 215; *Noy*, 27; *Drury v. Fitch*, Hutton. 17.

if the King should have the custody of it, a great prejudice would be done to the lord of the manor; but yet it is said, that all alienations made by an idiot of his copyhold after office found shall be avoided by the Crown (a). It is laid down that the Court of Wards had no power to make orders respecting the copyholds of an idiot copyholder, but that it should be done in the Court of the lord of whom the copyhold is held (b). And it was resolved in one case (c), that the lord should have the custody of one that was *mutus et surdus*, although no custom was laid, the question being between the *prochein amy* and the lord; and the reason given why the lord should have the custody is, because otherwise he would be prejudiced in his rents and services; which reason extends as well to cases where there is no custom, as where there is, and would be equally applicable to idiots and lunatics, as to one who is *mutus et surdus*.

Provision is now made for the admittance of lunatics to any copyholds to which they may become entitled, and for payment of the fines to the lord of the manor of which such lands are holden (d).

And it is provided (e) that after the lord shall have been paid his fine and costs, it shall be lawful for the lunatic or his committee to enter upon, and take possession of, and hold the copyhold land according to the estate or interest the lunatic shall be lawfully entitled to therein, and the lord of the manor is required to deliver possession thereof accordingly; and if the lord, after payment or tender of the fine and costs, shall refuse to deliver the possession of the copyhold, he is liable to make satisfaction to the persons kept out of possession for the damages they sustain.

(a) *Beverley's case*, 4 Rep. 126, b; Bac. Abr. tit. "*Idiots & Lun.*" (C).

(b) *Dyer*, 303, a.

The rule of the Court of Wards was, that if an idiot had not any goods or lands, except copyholds held of a subject, the Crown should not have the custody, but the lord

of whom the copyhold was holden; but if he had any other, then the copyhold also. *Ibid.* n. (46).

(c) *Evers v. Skinner*, Cro. Jac. 105.

(d) 11 Geo. 4, and 1 Wm. 4, c. 65, ss. 3, 5 and 6.

(e) *Id.* s. 7.

The modern acts of Parliament (*f*), enabling the person intrusted by the King's sign manual with the care and commitment of the custody of the persons and estates of lunatics, to make orders for selling, mortgaging, leasing, or otherwise disposing of their estates, expressly extend to copyholds.

The prerogative of the Crown does not prevent a private person from confining a relation or friend who is mad (*g*), under the regulations made by several statutes (*h*). The right of the Crown to control and manage lunatics and their estates commences with the finding of the office, or inquisition of lunacy (*i*).

SECTION II.

Of the Jurisdiction of the Court of Chancery.

BEFORE the Court of Wards was erected, the jurisdiction, both as to idiots and lunatics, was exercised in the Court of Chancery, and therefore, whilst the former existed, all commissions respecting them were taken out of Chancery and returned there; and after the abolition of the Court of Wards, by stat. 12 Car. 2, c. 24, such jurisdiction reverted to the Court of Chancery (*a*). In the case of an infant, the Lord Chancellor is acting as the Court of Chancery; not so in lunacy; but under a special separate commission from the Crown, authorizing him to take care of the property, and for the benefit of the lunatic (*b*). When a person is found an idiot or a lunatic, the Crown alone has power to grant the custody of the idiot or lunatic and his estates, by sign manual;

(*f*) 59 Geo. 3, c. 80, s. 2; 11 Geo. 4, and 1 Wm. 4, cc. 60, 65, s. 2.

(*g*) 2 Roll. Abr. 546; see 17 Geo. 2, c. 5, s. 20.

(*h*) 1 & 2 Vict. c. 14, s. 2; 8 & 9 Vict. c. 126, s. 49; 8 & 9 Vict. c. 100.

(*i*) 8 Rep. 170, b.

(*a*) *Corporation of Burford v. Lenthall* and others, 2 Atk. 553; *Smith v. Smith*, 3 Atk. 304; 2 Vern. 342.

(*b*) *Ex parte Phillips*, 19 Ves. 122. 285.

and, therefore, to save repeated applications to the Crown, it has been the practice for the Crown to intrust such power by warrant under the sign manual, countersigned by the two secretaries of state, to the Lord Chancellor, on his coming into office; by virtue of which warrant, and not as Chancellor, he has the ordering and disposition of the persons and estates of idiots and lunatics; and such warrant confers no jurisdiction, but only a power of administration. (*c*)

This authority is given to him (as stated in the warrant) in consideration of its being his duty, as Chancellor, to issue the commission on which the inquiry as to the fact of idiocy, or lunacy, is to be made. This branch of the prerogative may be exercised by any officer the Crown thinks fit; it is ordinarily delivered to a great officer of state, but not necessarily to the keeper of the great seal (*d*); an instance is mentioned of the Lord High Treasurer having the warrant (*e*); but if it were granted to any other officer of state, it would not enable such officer to act after the grant made to the committees, but merely to direct such grant.

The keeper of the great seal is usually entrusted with the care of lunatics (*f*).

The warrant confers the right of making grants of the custody of the persons and estates of idiots and lunatics, and empowers the Lord Chancellor, or other person to whom it is given, to prepare and pass such grants, without any further special warrant from the Crown (*g*).

Lord *Redesdale*, C., however, expressed a doubt whether the warrant thus given to the Chancellor, was an authority for passing letters patent, granting to any person, for his own benefit, the surplus profits of the estate of an idiot, and inclined to the opinion that a grant of the lands of an idiot without account cannot be made without the King's special warrant (*h*).

(*c*) *In re Heli*, 3 Atk. 635; 2 Ves. jun. 72.

(*d*) 4 Bro. C. C. 233; 2 Shaw & Wilson, 525.

(*e*) 2 Dick. 553.

(*f*) 19 Ves. 283.

(*g*) See 3 P. Wms. 137, note (*a*).

(*h*) *Lysaught v. Royse*, 2 Sch. & Lef. 153.

As the Crown is only entitled to the profits of the estates of a lunatic for the support of him and his family, and is bound to render the surplus to the lunatic when he recovers his understanding, the Crown cannot grant the lands of a lunatic to another person for his own benefit (*h*). And it seems that no grant of a lunatic's estate can be made by the Chancellor otherwise than during pleasure; for, in contemplation of law, a lunatic is always capable of recovering his understanding (*i*). But though the Crown's grant of a lunatic's estate without account is void, yet the Crown, or the Chancellor by authority of the sign manual, may allow such a yearly maintenance to the committee, as amounts to the yearly value of the lunatic's estate (*k*).

No restriction being imposed upon the Crown by the statute *de prærogativâ regis*, or any other statute, as to the persons in whose favour grants to committees are to be made, he may commit the custody of a lunatic and his estates to any person, or number of persons, he pleases, although the relations of the lunatic are usually preferred. The grant, like most other grants from the Crown, is made by letters patent under the great seal (*l*).

The issuing the commission of lunacy is under the direction of the great seal, and the care and custody of the persons and estates of lunatics belong to the Crown, to be provided for upon special application for the purpose. This duty of the Crown was to be performed according to the advice upon which the Crown might constitutionally act, and it has, therefore, long been the practice, from time to time, to authorize, by the Sovereign's sign manual, the person holding the great seal to exercise the discretion of the Crown in providing for the care and custody of the persons and estates of lunatics, which has been usually done by grants to committees. But though the discretion of the Crown has thus been delegated to the person holding the great seal, yet the superintendence of the conduct

(*h*) 4 Rep. 127, b; Moor, 4, pl. 12; 8 Rep. 170. Wms. 110.

(*i*) *In re Fitzgerald*, 2 Sch. & Lef. 438.

(*k*) *Sheldon v. Fortescue*, 3 P.

(*l*) 1 Coll. on Lun. 97; 2 Bl. Comm. 346. But see statutes 39 & 40 Geo. 3, c. 88, s. 4; 47 Geo. 3, c. 24.

of the committee, in the management both of the property and of the person, originates in the authority of the Court of Chancery, as the Court from which the commission inquiring of the lunacy issues, and into which the inquisition is returned, and which makes the grant founded on the inquisition, for which grant the sign manual is a general warrant (*m*).

After the custody is granted, the keeper of the great seal acts in matters relative to the lunatic, not under the sign manual, but by virtue of his general power as keeper of the Sovereign's conscience; and the orders of the Court of Chancery in matters of lunacy are enforced by attachment, not as being warranted by the sign manual, but by the general power of the Court (*n*).

The powers of the Lord Chancellor to enforce orders in lunacy have recently been considerably extended. All orders of the Lord Chancellor in matters of lunacy whereby any sum of money, or any costs, charges, or expences shall be payable to any person, have the effect of judgments in the superior Courts of Common Law, and the persons to whom any such monies or costs, charges, or expences are payable, are judgment creditors within the meaning of the act, 1 & 2 Vict. c. 110, and all powers by that act given to the Judges of such Courts may be exercised by the Lord Chancellor in matters of lunacy; and all remedies thereby given to judgment creditors, are in like manner given to persons to whom any monies or costs or expences are by such orders directed to be paid (*o*).

There are several instances of orders for committing parties to the Fleet for disobeying orders in lunacy (*p*). The Fleet prison is now abolished, and the "Queen's prison" is substi-

(*m*) *In re Fitzgerald*, 2 Sch. & Lef. 438.

(*n*) *Ex parte Grimstone*, 2 Ambl. 707; see 2 Sch. & Lef. 438; 6 Ves. 783.

(*o*) 1 & 2 Vict. c. 110, s. 18; 3 & 4 Vict. c. 105, s. 27, Ireland. See 5 & 6 Vict. c. 84.

(*p*) *In re Lord Wenman*, 20 Jan. 1721; *In re Pargiter*, 18 & 30 July, 1744; *In re Quick*, Dec. 1806; *In*

re Owen, Aug. 1812, and June, 1813; *In re Bennett*, March, 1822; *In re Turner*, Aug. 1828, and March, 1830. In one case a committee of a lunatic and his wife, and the printer, were ordered to be committed to the Fleet prison, for publishing a pamphlet defaming the proceeding of the Court in a lunacy. *Ex parte Jones*, 13 Ves. 237.

tuted for persons who formerly might lawfully have been imprisoned in the Fleet prison (*q*).

As the Crown is bound in conscience to execute the trust reposed in him by the statute, and cannot do it otherwise than by bailiff, the Chancellor, or person holding the great seal, is the proper authority to direct and control the authority of the person so appointed bailiff (*r*).

Upon every change in the persons having the custody of the great seal, a special authority under the sign manual is granted to the person or persons newly appointed, who have jurisdiction to alter or discharge the orders of their predecessors (*s*). Neither the Master of the Rolls, nor the Vice Chancellors can sit for the Lord Chancellor or make any orders in matters of lunacy (*t*).

By several statutes, the Lord Chancellor intrusted by virtue of the Sovereign's sign manual, with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind is authorised to do a variety of acts in relation to lunatics (*u*). The powers and authorities given by these acts to the Lord Chancellor so intrusted, may be exercised by the Lord Keeper, or Commissioners of the Great Seal for the time being, intrusted as aforesaid (*x*). In other acts of Parliament the words, "Lord Chancellor," shall be taken to mean and include also the Lord Keeper, or Lords Commissioners for the custody of the great seal, or other the person or persons for the time being, intrusted by virtue of the Queen's sign manual, with the care and commitment of the custody of persons found idiot, lunatic, or of unsound mind (*y*).

The powers conferred by these statutes being given only to the great officers therein named, and not to the Court of

(*q*) 5 & 6 Vict. c. 22, s. 1.

(*r*) 2 Sch. & Lef. 439.

(*s*) 4 Bro. C. C. by Eden, 235, in note.

(*t*) See stat. 53 Geo. 3, c. 24, creating the office of Vice Chancellor of England; 5 Vict. c. 5.

(*u*) 11 Geo. 4, and 1 Wm. 4, cc. 60, 65; 6 Geo. 4, c. 53; 3 & 4

Wm. 4, c. 36.

(*x*) 11 Geo. 4, and 1 Wm. 4, c. 60, s. 28; c. 65, s. 42; 3 & 4 Wm. 4, c. 74, s. 33; see 1 & 2 Vict. c. 110, s. 121; 3 & 4 Vict. c. 36, s. 1.

(*y*) 5 & 6 Vict. c. 84, s. 17; 8 & 9 Vict. c. 100, s. 114.

Chancery generally, it follows that the other Judges of that Court have no power to make orders under them respecting lunatics. It has been decided that the Vice Chancellor has no authority to make an order of reference under 11 Geo. 4, and 1 Wm. 4, c. 60, with respect to a lunatic trustee (*w*). As the Court of Exchequer in equity had no jurisdiction in lunacy, the Lord Chancellor upon an application under the 11 Geo. 4, and 1 Wm. 4, c. 60, for a transfer of stock, standing in the name of a lunatic, would not adopt the facts as found in the proceedings in a suit in the Court of Exchequer but required them to be ascertained by the usual reference (*x*).

The appeal against proceedings touching the awarding or refusing commissions of lunacy, or any orders made in lunacy by the Lord Chancellor, does not lie in the ordinary course to the House of Lords, but immediately to the Queen in Council (*y*). But it seems to have been the opinion of Lord *Hardwicke*, that if an inquisition of lunacy was found and returned and afterwards traversed, and an erroneous judgment given on a trial in the Court of King's Bench, that a writ of error in Parliament would lie (*z*).

Where the persons of idiots or lunatics are amenable to the Chancellor's jurisdiction, the circumstance of their property being out of the jurisdiction is not material (*a*): nor is the jurisdiction lost merely by their being abroad (*b*); for the jury may be satisfied of the party's state of mind without an inspection; and a person found a lunatic by a competent jurisdiction abroad was considered a lunatic here, for the purpose of conveying as a mortgagee under 4 Geo. 2, c. 10 (*c*).

(*w*) *In re Shorrocks*, 2 My. & Cr. 31; *Anon.* 5 Sim. 322; *In re Mount*, Law, J., 1843, Ch. 95.

(*x*) *In re Prideaux*, 2 My. & Cr. 640; *In re Skerrett*, 2 Dru. & War. 590.

(*y*) 3 P. Wms. 107 and note (*a*); *Rochfort v. The Earl of Ely*, 1 Br. P. C. 450, Toml. ed.; 2 Ves. jun. 72; 4 Br. C. C. 238, in note; and see 7 Br. P. C. 473, Toml. ed; *In re Earl of Lanesborough*, 8th July,

1826; Lloyd & G. temp. Plunket, 503, *Grosvenor v. Drax*, 2 Knapp, 82.

(*z*) Hovenden's Suppl. to Ves. jun. Vol. 1, p. 479; 3 Bl. Comm. 49, 427; 1 Cox, 418; but see 1 Vern. 131.

(*a*) *Ex parte Annandale*, Ambl. 80; 4 Br. C. C. 236.

(*b*) *Ex parte Southcot*, 2 Ves. sen. 401; S. C. Ambl. 109.

(*c*) *Ex parte Otto Lewis*, 1 Ves. sen. 298.

The existence of a commission in any of the colonies is no reason why a commission should not issue here when the lunatic comes to England; for while the lunatic is here no Court has any authority over him or his property, unless a commission is taken out (*d*).

By two recent statutes (*e*), it is expressly provided, that the powers and authorities given by those acts to the Lord Chancellor of Great Britain, intrusted with the care and commitment of the custody of the persons and estates of persons found idiots, lunatics, or of unsound mind, shall extend to all land and stock wheresoever, within any of the dominions, plantations, and colonies belonging to his Majesty (except Scotland and Ireland).

Neither the lunatic nor his committee can present to a church; for, where the lunatic is seised of an advowson, the Lord Chancellor, by virtue of the general authority delegated to him, presents to the living, whatever the value of it be, usually, however, giving it to a member of the family. This right seems to have been first exercised by Lord *Talbot*, whose example has been followed by all his successors (*f*).

Generally speaking, the English law prevails in Ireland, and it is clear that all statutes made in England before the 10 Hen. 7, were extended to Ireland, and rendered of equal force there by one of *Poyning's* laws (*g*). But, before the union of the two kingdoms, acts of Parliament made in England since 10 Hen. 7, in which Ireland was not expressly named, did not relate to that country. When that important event took place, in the year 1800 (*h*), and the two countries were incorporated together, it was expressly provided, that all laws in force in Ireland, at the time of the union, should remain as by law established, but subject to be altered by the united Parliament. Since the union, it should seem, that statutes made by the Parliament of the united kingdom extend to Ireland, though not specifically mentioned, unless expressly excluded; in the same manner and

(*d*) *In re Houston*, 1 Russ. 312.

(*g*) See 4 Inst. 351; 1 Bl. Comm.

(*e*) 11 Geo. 4, and Wm. 4, c. 60,
s. 26, and c. 65, s. 39.

103; Irish stat. 10 Hen. 7, c. 22.

(*h*) 39 & 40 Geo. 3, c. 67.

(*f*) 1 Wood. Lect. p. 409.

for the same reasons that Scotland is bound by English statutes since her union with England.

The Lord Chancellor of Ireland is usually intrusted by the Sovereign's sign manual, with the authority to make orders and grants of the persons and estates of lunatics in that country as in England (*i*).

By the statutes 11 Geo. 4, and 1 Wm. 4, c. 60, s. 27, and c. 65, s. 40, it is provided, that the powers and authorities given by those acts to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall be exercised by the Lord Chancellor of Ireland with respect to all land and stock in Ireland.

An inquisition taken in England under a commission of lunacy issued there, finding a person *non compos*, was held not a sufficient foundation for a grant of lands belonging to the lunatic in Ireland, but that there must be an inquisition and finding under the great seal in Ireland for that purpose (*k*).

But now, by statute 11 Geo. 4, and 1 Wm. 4, c. 65, s. 41 (*l*), it is provided, that in all cases where any person has been or shall be found lunatic or of unsound mind, and incapable of managing his or her affairs, by any inquisition of lunacy under the great seal of Great Britain, it shall be lawful for the proper officer, by order of the Lord Chancellor of Great Britain intrusted as aforesaid, to transmit a transcript of the record of such inquisition to the Chancery of Ireland, and such transcript shall thereupon be entered of record there; and in case a writ of *supersedeas* of any such commission shall issue, the issue of such writ shall be certified and transmitted and recorded in like manner; and the copies of the record of any such inquisition or *supersedeas* so transmitted and entered of record, shall, if the Lord Chancellor of Ireland shall see fit, be acted upon by him, and be of the same force and validity in Ireland as if such inquisition had been taken on a commission under the great seal of Ireland, and such writ of *supersedeas* had been issued under the great seal of Ireland; and a transcript of a like inquisition on a commission under the great seal of Ireland,

(*i*) 2 Sch. & Lef. 438; 1 Alc. & 1 Sch. & Lef. 301.

Nap. Ir. Rep. 35.

(*l*) Re-enacting the 9 Geo. 4,

(*k*) *In re* Duchess of Chandois, c. 78, s. 3.

and of a writ of *supersedeas* of any such commission, may be certified and transmitted to the Chancery of England, and recorded in like manner, and shall have the same force as if such inquisition and *supersedeas* had been taken and issued under the seal of Great Britain. Under this statute an order may be obtained, on petition, that the proper officer for that purpose, at the Petty Bag Office, do transmit a transcript of the inquisition on a commission in the nature of a writ *de lunatico inquirendo* taken in the matter, to the Chancery of Ireland, to be thereupon entered of record, and be as of record, and to be acted upon there in the manner and for the purposes mentioned in that act (*m*).

If a lunatic die before office found, no inquisition can be taken; for the commissioners and jury may demand inspection, and the property is vested in other persons, so that no right accrues to the Crown (*n*).

If an idiot die after office found, but before possession has been taken of his property on behalf of the Crown, it may be seised into the hands of the Crown for the purpose of being restored to the right heirs (*o*).

An order does not abate by the death of a *non compos*; and therefore, a reference directed to the Master in his lifetime may, in some cases, be prosecuted, and the report made, after his death.

A reference to inquire who were the next of kin of a lunatic having been directed to the Master, and the lunatic having died before the report was made, a petition was preferred, that the Master might, nevertheless, be ordered to make a report. Lord *Thurlow*, C. decided, that the order did not abate by the death of the lunatic; and that any party might prosecute it and take out the report (*p*). In one case, exceptions taken to the Master's report by the heir-at-law of a lunatic, were decided after the death of the lunatic (*q*). An order may be made in

(*m*) *In re Lord Creighton*, 29 Oct. 1828.

(*n*) 4 Rep. 127, a.

(*o*) Staundf. Pr. Reg. 35, (b).

(*p*) *Ex parte Armstrong*, 3 Bro. C. C. 238.

(*q*) *In re Roberts*, 3 Atk. 338. It is not now the practice to except to the Master's report in matters in lunacy, but to state any objections to it by petition.

lunacy, after the death of a *non compos*, on a petition preferred in his lifetime. A reference having been directed to the Master, to inquire what demands were outstanding against a lunatic and his estate, and how they should be discharged, a creditor claimed a debt which the Master disallowed; no report was made under that reference. The creditor preferred a petition, that his claim might be admitted, or put in a course of trial. The lunatic died before the petition came to a hearing; and it was insisted, that no order could be made in lunacy, after the death of a lunatic, except upon the report of a Master in his lifetime.

Lord *Erskine*, C., said, the universal course in the case of a petition preferred during the life of the lunatic, is to apply the fund in discharge of the different creditors, unless there is reasonable doubt whether the debt exists; which must be made the subject of consideration at law: but when it is ascertained, that the creditor has a demand, it is paid out of the funds of the lunatic. The petition was ordered to be retained; and what should be ascertained due by the verdict, in an action to be brought by the petitioner, was to be paid out of the lunatic's estate (*r*). But a petition presented after the death of the lunatic, and after the time, therefore, when the administrator was entitled to full possession, will be refused (*s*).

The Chancellor sitting in lunacy not having any direct jurisdiction for deciding the rights of third parties, as well as on account of the difficulty of getting any decision reversed, sometimes directs a bill to be filed, where there are conflicting claims between the real and personal representatives of the lunatic, after his death (*t*).

An order made in a lunacy may in some cases be carried into effect notwithstanding the death of the lunatic after the order was pronounced, and, in one case, a party was compelled to execute a conveyance, after the death of the lunatic, by attachment (*u*).

(*r*) *Ex parte M'Dougal*, 12 Ves. 384.

(*s*) *Garnet's case*, and *Pochin's case*, cited 12 Ves. 385; see *Rocke v. Cooke*, 1 Coll. C. C. 477, *post*, c. 5, s. 12.

(*t*) *Ex parte Broomfield*, 1 Ves. jun. 463; *Ex parte Phillips*, 19 Ves. 122.

(*u*) *Ex parte Roberts*, 3 Atk. 308; *Ambl.* 707.

But, where there had been a reference to the Master, in the lifetime of the lunatic, to inquire whether it would be proper to sell or mortgage any part of the lunatic's estate, for payment of his debts, the Lord Chancellor refused, after the death of the lunatic, to order the Master to proceed with the inquiries directed by the former order (*v*).

The Court will not carry into effect, after a lunatic's death, a sale of his estate previously made by private contract, there having been only an order to sell by public auction (*w*).

The Lord Chancellor has no power, after the death of the lunatic, to enforce an order made during life, he having been tenant for life, and the execution of the order affecting the rights of the remainder man, who has entered since the death of the lunatic. A tenant for life having a leasing power, made an agreement for a lease, and afterwards became a lunatic. By an order in the lunacy, the contract for a lease was ordered to be executed. The lunatic died. A petition presented, praying that the order might be carried into effect, was dismissed, because the jurisdiction as to the real estate was terminated by the lunatic's death (*x*).

Though the Chancellor has no jurisdiction in lunacy, after the death of the lunatic, to try the question of heirship, yet, under particular circumstances, possession of his estates was ordered to be given to the parties reported by the Master to be heirs-at-law; but without prejudice to any other person. And another party claiming to be heir to the lunatic, was permitted by the Court, on petition, after the possession of the estates had been given up to the parties reported to be heirs, to inspect deeds and documents remaining in the Master's office, which, it seems, may be retained till a proper investigation has taken place (*y*).

In a case in Ireland Lord *Manners*, C., made an order of reference in a lunacy after the death of the lunatic, to inquire and report who were the heir-at-law and next of kin of the lunatic. The master made his report. Sir *A. Hart*, C., after-

(*v*) *In re Holmes*, 19 Aug. 1831.

(*w*) *In re Loft*, 8 Jur. 206.

(*x*) *In re Earl of Kingston*, 2 Ir. Eq. R. 169.

(*y*) *Ex parte Clarke*, *In re The Duchess of Norfolk*, Jac. 589. *In re Pearson*, 1 C. P. Coop. 317.

wards, on the case coming before him, held, that the Chancellor's authority under the sign manual continues only during the life of the lunatic, and is at an end when the lunatic dies; that the order of reference was wrong, and that he could make no order in lunacy touching the property of the deceased lunatic after it had ceased to be his. His Lordship mentioned *Cotton's lunacy*, in which Lord *Eldon* made a similar order, which, after having led to two trials at law, was acknowledged by him to have been wrong; and finally a bill was filed (*z*). But Sir *A. Hart*, C., held, that he had jurisdiction, from the necessity of the case, to call upon the committee of the estate to wind up his account and to hold the assets in safety; but that the next of kin had not primarily any right which could be recognised, but that they must work out their title through the Prerogative Court, in the regular way (*a*).

Where the title deeds of an estate belonging to a deceased lunatic had been lodged in Court, pursuant to an order, the Court refused to make an order for inspecting them on behalf of the person claiming as heir of the lunatic, until a bill should be filed, and the deeds transferred to the credit of that cause (*b*). But deeds have been delivered out upon a report as to the heir at law, under an order made by the acquiescence of all parties after the lunatic's death. (*bb*).

The control which the Court has over the committee of a lunatic does not determine by his death; but the committee continues liable to account, and to all the consequences of any misconduct on his part, and bound to act in delivering possession of the estates as the Court shall direct (*c*). And a receiver of the lunatic's estate may be ordered to continue to act, until the arrears of the rents and profits, due at the time of the decease of the lunatic, shall be paid and satisfied (*d*).

Petitions presented in lunacy after the death of the lunatic, ought to contain a statement of that fact (*e*).

(*z*) *Beer v. Ward*, Jac. Rep. 194.

(*a*) *In re Barry*, 1 Molloy, 414.

(*b*) *In re Fitzgerald*, 2 Sch. & Lef. 442.

(*bb*) *In re Pearson*, 1 C. P. Coop. 314.

(*c*) *In re Fitzgerald*, 2 Sch. & Lef. 440.

(*d*) *Ex parte Clarke*, *In re Duchess of Norfolk*, Jac. Rep. 589.

(*e*) *In re Briscoe*, 2 Dru. & War. 501.

With respect to the jurisdiction in the English colonies, it appears that the several Governors of Dominica (*f*), Antigua (*g*), Nevis (*h*), St. Christopher (*i*), Jamaica (*k*), and the Bahamas (*l*), have express authority given to them by their respective commissions, to make orders and directions for preparing grants for the custody or commitment of lunatics within their jurisdiction.

In Barbadoes (*m*), Tobago (*n*), Grenada (*o*), and Tortola (*p*), no special authority in lunacy is delegated to the respective governors, but the jurisdiction is exercised by the Court of Chancery in those places.

In the united colony of Demerara and Essequibo, and colony of Berbice, where the Dutch law prevails, the superior Court has authority to appoint curators over the person and property of idiots, prodigals, and lunatics (*q*).

SECTION III.

Of the Jurisdiction in Scotland.

By the 18th article of the union of England and Scotland, which was effected in the reign of Queen Anne (*a*), it is or-

(*f*) See Second Report of the Commissioners of inquiry into the administration of justice in the West Indies; ordered by the House of Commons to be printed, 18th April, 1826, p. 34.

(*g*) *Id.* p. 68.

(*h*) *Ibid.*

(*i*) *Id.* p. 69.

(*k*) First Report of Commissioners of inquiry into the administration of justice in the West Indies; ordered by the House of Commons to be printed, 29th June, 1827, pp. 61, 204.

(*l*) Third Report, &c.; ordered to be printed, 12th June, 1829,

pp. 65, 131.

(*m*) First Report of Commissioners of Inquiry, &c., p. 20.

(*n*) *Id.* p. 128.

(*o*) *Ibid.*

(*p*) Second Report of Commissioners, &c., p. 69.

(*q*) Second Report of Commissioners of Inquiry into the administration of justice in the West Indies and South American colonies; ordered by the House of Commons to be printed, 25th July, 1828; p. 68. See Henry on Foreign Law, 38, 39; Story's Conflict of Laws, pl. 99, 106.

(*a*) 5 & 6 Anne, ch. 8.

dained, that all the then existing Scotch laws should remain in force, alterable, however, by the united Parliament of Great Britain; so that the municipal or common laws of England are, generally speaking, of no force or validity in Scotland, though, since the union, general statutes passed in England bind and extend to Scotland, even if that country be not particularly mentioned; the usual method when it is intended not to include Scotland, is to add a proviso to that effect (*b*).

The law of Scotland provides curators, not only for minors, but for every person who, either from a total defect of judgment, or, secondly, from a disordered brain, or, thirdly, from the wrong texture or disposition of the organs, is naturally incapable of managing his affairs with discretion.

Of the first class, are fatuous persons, called also idiots in the law of Scotland, who are entirely deprived of the faculty of reason, and have an uniform stupidity and inattention in their manner, and childishness in their speech, which generally distinguish them from other men; and this distemper of mind is commonly from birth, and incurable. Furious persons, who may be ranked in the second class, cannot be said to be deprived of judgment, for they are frequently known to reason with acuteness; but an excess of spirits, and an overheated imagination, obstruct the application of their reason to the ordinary purposes of life; and their infirmity is generally brought on by sickness, disappointment, or other external accidents, and frequently interrupted by lucid intervals. Under these may be included madmen, though their madness should not discover itself by acts of fury, but by a certain wildness of behaviour flowing from a disturbed fancy. Lunatics are those who are seized with periodical fits of frenzy. Some doctors distinguish between fatuity and a certain degree of imbecility, which nearly approaches to it. (*c*).

The guardianship of all unprotected persons, by reason of weakness of understanding, by extreme youth, natural infirmity of talent, by nature or disease, was formerly vested in the

(*b*) See 2 Burrow's Rep. 853.

land, by Wallace, Vol. 1, Book 6, tit. 17.

(*c*) Erskine Inst. by Ivory, 198,

199; see principles of Law of Scot-

Crown. The Sovereign, as *pater patriæ*, was clothed with authority to do this; and, as a matter of course, where persons, within the age of pupilarity, have neither testamentary tutors appointed to them, nor a tutor at law, served to the office, a gift of tutory is granted to some one to protect the pupil. It was the Sovereign's privilege and right to name protectors at pleasure, to persons visited by furiosity or imbecility of intellect, till that right was limited by the statute 1585, c. 18, which enacted, "That the nearest agnates and kinsmen of natural fools, idiots, and furious persons, shall be served, received, and presented, according to the disposition of the common law, to their tutory and curatory" (*d*).

By the common law, in the above passage, is meant the civil law in force in Scotland.

The Barons of the Exchequer in Scotland formerly exercised the King's prerogative in the same manner, nearly, as the Chancellor in England, but neither of them is subject to the laws of the other (*e*).

By stat. 2 & 3 Wm. 4, c. 54, s. 1, it is enacted, That upon the retirement or decease of the then Lord Chief Baron, or any of the then barons of the Court of Exchequer in Scotland, no successor shall be appointed to their respective offices.

The 2nd section enacts, That after the retirement or decease of any of the existing judges of the said Court, all the judicial and other duties then discharged by the said Court, or any of the judges thereof, shall be discharged by the remaining judges, or the last remaining judge thereof.

The 3rd section provides, That, after the death or retirement of the last baron, the duties of such judge are to be discharged by a judge of the Court of Session.

By the 4th section power is given to the judge of the Court of Session to issue commissions.

In case of the indisposition or unavoidable absence of the

(*d*) See Craig, lib. 2, Deig. 20, sect. 9; and 6 Shaw & Dunlop, pp. 433, 4; 1 Stair's Inst. 52. (*e*) 11 & 12 Vol. Dict. of Decisions, p. 4596.

remaining baron of the Court of Exchequer, the judge of the Court of Session may try suits in the Exchequer Court (*f*).

The regular method pointed out by the law of Scotland for declaring fatuity or furiosity is, by *briefes* [*writs*] issuing from the Chancery there, directed to the judge ordinary of the territory, where the person who is said to be fatuous or furious resides, directing such judge to call an inquest for inquiring, first, into the person's true state; and, secondly, on whom the office of curatory may be conferred. The person concerning whom the inquiry is directed ought to be made a party to the brief, because, if he be truly of sound mind, he has good interest to oppose it; and instances have occurred of such *briefes* being advocated upon the party's opposition (*g*).

The law of Scotland commits the care of fatuous and furious persons to the next male agnate, of the age of twenty-five years. A father has a natural right to the curatory of his fatuous or furious son: and a husband, as his wife's administrator in law, excludes agnates, in the case of her fatuity (*h*).

When the service is returned to the Chancery in Scotland, a letter of tutory is granted in the Sovereign's name, appointing him tutor who is found by the inquest to be the nearest agnate, and a proper person; but the party may be cognosced to be in such a state as to want tutors; and the next agnate, notwithstanding, may decline the tutory, or perhaps the inquest may return that there is none capable of the office: in this case, application must be made to the proper Court in Scotland for a tutory dative to the idiot or madman (*i*).

In the tutory of idiots, madmen, or other persons incapable, the next agnate may claim preference at any time, and that, even though another was appointed tutor dative in the mean time: because of the probable interest he has in the succession

(*f*) 5 & 6 Wm. 4, c. 46; see 7 Wm. 4, and 1 Vict. c. 65.

(*g*) Erskine's Inst. by Ivory, 200. The forms of proceedings in the appointment of curators will be

found in Bell's Forms of Deeds in Scotland, Vol. 3, pp. 357, 380.

(*h*) Id. 200. 201.

(*i*) 1 M'Douall's Inst. of Laws of Scotland, 166.

to the estate, which, therefore, he is presumed to take best of (*k*).

The tutor is accountable, and must find caution, for his faithful administration, and give his oath likewise to the same purpose (*l*).

Where the person under curatory has recovered his faculties, the Court will not discharge the curator until he has, in the first instance, accounted with his principal (*m*).

A tutor to an idiot, &c., cannot alienate the heritable subjects of the idiot, or other person under his charge, more than any other tutor can (*n*).

One of the heads of the brief of idiocy is to inquire at what time the person fell into that condition; so that the deeds granted by him after the time fixed by the inquest as the commencement of his disorder, are void; but though no service of idiocy did proceed, the party himself, on his convalescence, or his representatives, may reduce deeds granted by him during the furiosity. In case of lunacy, where the party has lucid intervals, the deed, according to its complexion, will be presumed to have been granted in the time either of the furiosity or intermission; but otherwise the presumption lies for the deed (*o*).

And a verdict on such an inquiry is a sufficient foundation, without further evidence, for setting aside, not only all such deeds of the fatuous person as were granted after producing the evidence to the inquest, but likewise such as were granted before that, if after the time when, according to the proof, the fatuity began (*p*).

The person alleged to be fatuous and furious ought regularly to be exhibited to the inquest, that they may be the better able, after conferring with him, to form a judgment of his state from their own knowledge; and this holds more especially in the cases of fatuity, and of a distempered brain, which are habitudes not quite so obvious to the senses as furiosity, and, in some

(*k*) Id. 166.

(*l*) Id. 206.

(*m*) Miller, 15th May, 1810; Fac. Coll.

(*n*) 1 M'Douall's Inst. 166.

(*o*) Ibid.; *Morrison v. Morrison*,

4 Bell & M. Second Series, 337.

(*p*) Erskine's Inst. by Ivory, 200.

cases, hardly to be discovered but by conference. The verdict, therefore, of the inquest, concerning the person's present condition, is grounded on the conviction arising in their breasts from what they have seen; but that part of it which relates to his past state must, of necessity, rest on the testimony of witnesses.

As fatuous and furious persons are, by their very state, incapable of consent, and consequently of obligation, all deeds granted by them may be declared void, by an action before the Court of Session, at the suit even of their heirs, upon proper evidence by witnesses of their fatuity or furiosity at the time of signing, though they should never have been cognosced idiots, during their lives, by an inquest (*q*).

Some few instances occur of the Sovereign's giving curators to idiots, where the next agnate has not claimed the office; but such gifts are a deviation from the law, since they pass without any inquiry into the state of the person to whom the curator is appointed; and they are admitted only from necessity, that the affairs of the idiot may not suffer. Hence, the curator of law to an idiot, though he should not serve till after the year in which he might have served, is preferred to the tutor dative as soon as he offers himself (*r*).

In a late case, the appointment of a curator was resisted, in the name of the party said to be imbecile; and it was argued, that he could not be deprived of his right to conduct his own affairs, unless regularly cognosced by a jury. The Court, however, having remitted to the sheriff to receive evidence, and being satisfied, on his report, and after a hearing in presence, of the necessity of a curator, sustained their appointment. On appeal to the House of Lords, the case was remitted to the Court of Session in Scotland, for the opinion of the fifteen Judges, to reconsider the case, particularly as to the power of the Court to proceed without a cognition (*s*).

The majority of the Judges, held that the Court has power to appoint a curator *bonis*; whose appointment, although in

(*q*) Erskine's Inst. by Ivory, 202.

(*r*) Ibid.

(*s*) *Bryce v. Graham*, 2 Wilson & Shaw, 481.

its own nature temporary, must continue, either till evidence of convalescence be adduced, or a tutor at law has been served; and secondly, that the Court has no power to compel any party to sue out a brief of cognition, and therefore they cannot limit the appointment to any definite period. And the Court refused to recall the nomination of the curator (*t*); which judgment, on appeal to the House of Lords, was affirmed without costs (*u*).

It was questioned whether a committee appointed by the Lord Chancellor to the person and estate of a Scotswoman in a state of mental alienation, who was originally domiciled in Scotland, but after her lunacy was removed into England, had a title to raise an action for obtaining and vesting in the committee, a heritable security for payment of an annuity due to the lady—no proceedings to cognosce the lady had been adopted in Scotland. The Court said, If the converse of the case had occurred, and they had cognosced an Englishman, whose domicil was English, but who had been brought to Scotland, it was apprehended that the title of the curator named by the Scotch Court, would not have been sustained in England in actions affecting heritable estate there. And they conceived there ought to be a reciprocity between the two countries (*v*).

Persons, let them be ever so profuse, or liable to be imposed upon, if they have the exercise of reason, can by the law of Scotland effectually oblige themselves, till they be fettered by the methods of law. This is done by interdiction; which may be defined, a legal restraint laid upon those who, either through their profuseness, or the extreme facility of their tempers, are too easily induced to make hurtful conveyances, by which they are disabled from signing any deed without the consent of their curators, who are called *interdictors*. Interdiction is either voluntary or judicial. In voluntary interdiction, the person to be interdicted agrees to the restraint. This sort is

(*t*) *Bryce v. Graham*, 6 Shaw & Dunlop, Cases in the Court of Session, p. 425.

(*u*) *S. C.* 3 Wilson & Shaw, 323.

(*v*) *Gordon v. Earl of Stair*, 13 Shaw, D., B. & M. 1073.

generally executed by a writing in the form of an obligation, by which the grantor, sensible of his own unfitness for business, binds himself not to do any act with respect to his estates, without the consent of those persons whom, by the deed, he authorizes to superintend for him, or, in other words, without whose consent he binds himself not to act (*w*).

By the Roman law, there could be no interdiction, without a previous inquiry into the condition of him who was to be laid under it; for it was deemed contrary to the nature of property, that any man should be subjected, even by his own consent, in the disposal of his estate, to the humour or caprice of another, without legal grounds.

Voluntary interdiction, after it is imposed, cannot be recalled at the pleasure of the party interdicted; but may, by process before the Court of Session at his suit, or by the mutual consent of the party and his interdictor (*x*).

Judicial interdiction is imposed by a sentence of the Judge, disabling persons of profuse or facile dispositions from granting deeds to their prejudice, without the consent of interdictors.

The cognizance of judicial interdictions belongs to the Court of Session, where sentence proceeds either *first*, *post causam cognitam*, upon an action brought against the prodigal by his heir, or his next of kin; or, *secondly*, *ex nobili officio* of the Judge; who, if he perceive, during the pendency of a suit, that either of the litigants is from the facility of his temper subject to imposition, will interdict him, *ex proprio motu*. The sentence of the Court imposing this restraint has no retrospective quality, as a verdict upon a brief of idiocy has. Judicial interdiction cannot be taken off but by the authority of the same Court which imposed it, finding that the party is become sane. And this authority secures all who shall contract with him, though the strongest evidence should be brought, that he still continues profuse, or liable to be imposed upon; for, as it was the sentence of the Court which

(*w*) Erskine's Inst. by Ivory,
203; see 3 Wilson & Shaw, 324.

(*x*) See Erskine's Inst. by Ivory,
203-4.

alone gave force to the restraint, the same authority is sufficient to take it off (*y*).

The law of Scotland, as to excusing persons from punishment who have committed crimes under the influence of insanity, seems, for the most part, like that of England (*z*).

(*y*) See Erskine's Inst. by Ivory, 203-4.

1 Vol. pp. 36 to 44, 2nd ed. The trial of Sir A. G. Kinloch, for murder, 25 Vol. Howell's State Trials, p. 891. See *post*, ch. xii. s. 1.

(*z*) See 1 Hume's Comm. on the Law of Scotland respecting Crimes,

CHAPTER III.

OF EVIDENCE RESPECTING THE EXISTENCE OF INSANITY.

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- 19.—*The evidence of medical men in cases of insanity.*



OF EVIDENCE RESPECTING THE EXISTENCE OF INSANITY.

1. *The law requires satisfactory evidence of insanity.*—Before any person is deprived of his personal liberty, or power of entering into contracts binding himself or his property, or exonerated from the penal consequences attending acts of a criminal nature, on the ground of insanity, clear and satisfactory evidence must be adduced to prove that the party labours under such alleged incapacity, in order that persons may not be cruelly debarred of their liberty, or power of contracting, or exempted from punishment, on slight and insufficient grounds. The existence of insanity is a fact, which, by the law of England, is not in general decided without the intervention of the verdict of a jury (*a*), whose decision in such cases, as in other questions of fact, ought to be founded on clear and unexceptionable evidence submitted to their consideration. On inquiries upon this subject the same general rules of evidence are to be observed as in other trials. It is the correct practice, where the question turns on the sanity of a party, to give particular acts of madness in evidence, and not general evidence that the party is insane (*b*). Reason, being the common gift to man, raises the general presumption that every man is in a state of sanity, and that *insanity* ought to be proved; and in favour of liberty and of that dominion which, by the law of nature, men are entitled to exercise over their own persons and properties, it is a presumption of the

(*a*) There has been a departure from this principle in some modern acts of Parliament, 1 & 2 Geo. 4, c. 114; 6 Geo. 4, c. 74, and 11 Geo. 4, and 1 Wm. 4, c. 60, s. 5, enabling the Lord Chancellor, in certain cases, to appoint a person to convey and transfer lands and stock vested in lunatics as trustees, who have not been found such by inquiry; and in such cases the existence of unsoundness of mind is determined on affidavit only,

either by the Lord Chancellor or by a Master in Chancery, to whom the matter is referred; see *post*, ch. viii. s. 3; stat. 3 & 4 Vict. c. 54, s. 1; 8 & 9 Vict. c. 126, ss. 48, 49.

In proceedings in the Ecclesiastical Courts, insanity, like other facts, is proved by the examination of witnesses on interrogatories in writing.

(*b*) 2 Atk. 340.

law of England, that every person, who has attained the usual age of discretion, is of sound mind until the contrary is proved: and this holds as well in civil as in criminal cases (c).

Insanity is in many cases a state of mind not only not easily reducible to any correct definition, but not easily ascertained, being frequently a disorder in those faculties, with the sound state of which mankind in general has made but a very moderate progress. But experience and observation will shew, that insanity may subsist in various degrees, sometimes slight, as partaking rather of disposition or humour, which will not incapacitate a man from managing his own affairs, or making a valid contract. It must be something more than this, something which, if there be any test, affords demonstrative proof of the incapacity of the individual to be trusted with the management of himself and his own concerns. Madness, when not raving, is sometimes an invisible quality, but it discovers itself, it presents its symptoms, it betrays and accuses itself by the most ordinary actions. The habit, the exterior appearance, the conversation, and other actions of a man, may furnish proofs of insanity, on account of their extravagant and unreasonable nature. But, as it is an habitual state or disposition, and generally a permanent affection of the mind, its existence must be proved, not by one instance of unreasonable conduct, but by reiterated acts, and a multiplicity of actions, by the testimony of persons who have been attentive observers of them.

In the general relations of life, a man may be thoughtless, ridiculous, and extravagant; yet such errors will not be sufficient to fix the charge of insanity, which consists either in false perceptions, or erroneous reasoning on objects distinguished in their true colours. Many individuals of this kind require guardians of their property, as much as persons really insane; but the law of England does not sanction the exercise of any such discretionary power. The difficulty arises when this wild absurd conduct is attended with such inconsistencies as lead to the suspicion that the perceptions or the reason are affected. Under such circumstances individuals are proper

subjects for the advice and remonstrance of friends, who may induce them to adopt a more prudent course of conduct, but not for the restraints imposed by law on lunatics.

2. *The object of judicial investigation of insanity.*—The judicial investigations of insanity are, for the most part confined to the inquiry whether such a state of incapacity arising from insanity exists, as actually disqualifies the person whose sanity is disputed, from conducting himself with personal safety to himself or others, or from managing and disposing of his own affairs and property.

Weakness of mind and insanity are susceptible of degrees and considerable differences; incapacity may increase and diminish in proportion to these degrees and these differences; but it is impossible to fix them in general, or to mark precisely the frontiers, the almost imperceptible limits, which separate insanity from sanity, or to number the degrees by which reason declines and falls into annihilation. It is necessary to consider such degrees so far only as they afford circumstances of evidence of legal competency or incompetency of mind.

A person's being of weak understanding, is not of itself any objection in law to his disposing of his estates. Courts will not measure the extent of people's understandings or capacities; if a man, therefore, be legally *compos mentis*, be he wise or unwise, he is the disposer of his own property, and his will stands as a reason for his actions; and there is no such thing as an equitable incapacity where there is a legal capacity (*d*).

The doubtful and uncertain point at which reason disappears, and where incapacity becomes evident and manifest, can be ascertained only by an examination of the particular circumstances of each individual case requiring decision.

From the diversity of views which have been taken of the precise condition of the mind which constitutes insanity, some important conclusions may be deduced—*First*, that all the faculties of the mind are capable of being affected in the

(*d*) *Osmond v. Fitzroy*, 3 P. Wms. 128; *Willis v. Jernegan*, 2 Atk. 251. See *post*, ch. vi. s. 4.

maniacal state, though not always equally, or at one and the same time—*Secondly*, that it is hardly possible to express in words the nice distinctions that mark the boundaries of reason and insanity, or to specify the delicate gradations by which weakness of intellect, depression of spirits, violence of temper, and eccentricity of manner, degenerate into actual disease—*Thirdly*, that, in determining the question of sanity or lunacy, the common sense of mankind must ultimately be relied on; and that its decision cannot receive much assistance from metaphysical speculations, although a general knowledge of the faculties of the human mind and their mode of operation, will afford much assistance in leading to correct conclusions respecting insanity.

3. *The test of unsound mind ought to be fixed as far as possible.*—In deciding whether a party is of sound or unsound mind, one of the most important points to be considered, and which should be distinctly ascertained, as far as it can be fixed, is what is the test and criterion of unsound mind, and where eccentricity or caprice ends, and derangement commences. Derangement assumes a thousand different shapes, as various as the shades of human character. It shows itself in forms very dissimilar both in character and degree. It exists in all imaginable varieties from the frantic maniac, chained down to the floor, to the person apparently rational on all subjects, and in all transactions save one; and whose disorder, though latently perverting the mind, yet will not be called forth, except under particular circumstances, and will shew itself only occasionally. We have heard of persons at large in Bedlam, acting as servants in the institution, shewing other maniacs, and describing their cases, yet being themselves essentially mad. We have heard of the person who fancied himself Duke of Hexham, yet acted as agent and steward to his own committee. It has probably happened to most persons who have made a considerable advance in life, to have had personal opportunities of seeing some of these varieties, and the intermediate cases between mere eccentricity and absolute phrensy—maniacs who, though they could talk rationally, and conduct themselves correctly, and reason rightly, nay, with force and ability, on

ordinary subjects, yet, on others, were in a complete state of delusion, which delusion no argument or proofs could remove. In common parlance, it is true, some say a person is mad when he does any strange or absurd act; others do not conceive the term madness to be properly applied, unless the person is frantic (e).

4. *Definition of sound and unsound mind.*—A *sound mind* is one wholly free from delusion, all the intellectual faculties existing in a certain degree of vigour and harmony; the propensities, affections, and passions being under the subordination of the judgment and the will, the former being the controlling power, with a just perception of the natural connexion or repugnancy of ideas. Weak minds, again, only differ from strong ones in the extent and power of their faculties; but, unless they betray symptoms of a total loss of understanding, or of idiocy, or of delusion, they cannot properly be considered unsound.

An *unsound mind*, on the contrary, is marked by delusion, mingles ideas of imagination with those of reality, those of reflection with those of sensation, and mistakes the one for the other. And such delusion is often accompanied with an apparent insensibility to, or perversion of, those feelings which are peculiarly characteristic of our nature. Some lunatics, for instance, are callous to a just sense of affection, decency, or honour; they hate those without a cause who were formerly most dear to them; others take delight in cruelty; many are more or less offended at not receiving that attention to which their delusions persuade them they are entitled.

Retention of memory, display of talents, enjoyment in amusing games, and an appearance of rationality on various subjects, are not inconsistent with unsoundness of mind; hence, sometimes arises the difficulty of distinguishing between sanity and insanity. The man of insane mind from disease, having been once *compos mentis*, pertinaciously adheres to some *delusive idea*, in opposition to the plainest evidence of its falsity;

(e) See *Dew v. Clark*, reported by Haggard, p. 5; S. C. 3 Add. 87, 88.

and endeavours, by the most ingenious arguments, however fallacious they may be, to support his opinion (*f*).

5. *Delusion the test of insanity*.—The true criterion, the true test, of the absence or presence of insanity, where there is no frenzy or raving madness, seems to be the absence or presence of what, used in a certain sense of it, may be comprised in a single term, namely, *delusion*. Wherever the patient once conceives something extravagant to exist, which has still no existence whatever but in his own heated imagination; and, wherever, at the same time, having once so conceived, he is incapable of being, or at least, of being *permanently* reasoned out of that conception—such a patient is said to be under a *delusion*.

Insane delusion consists in the belief of facts which no rational person would have believed. This delusion may sometimes exist on one or two particular subjects, though, generally, there are other concomitant circumstances, such as eccentricity, irritability, violence, suspicion, exaggeration, inconsistency, and other marks and symptoms, which may tend to confirm the existence of delusion, and to establish its insane character.

The absence or presence of delusion so understood, forms the true and only test, or criterion, of absent or present insanity. In short, delusion in that sense of it, and insanity, seem to be almost, if not altogether, convertible terms; so that a patient under a delusion, so understood, on any subject or subjects, in any degree, is, for that reason essentially mad or insane on such subject or subjects in that degree. On the contrary, in the absence of any such delusion, with whatever extravagances a supposed lunatic may be justly chargeable, and how like soever to a real madman he may either speak or act on some or on all subjects; still, in the absence of any thing in the nature of *delusion*, so understood, the supposed lunatic is not properly or essentially insane (*g*).

In most cases of delusion, the delusion founds itself, ori-

(*f*) Willis on Mental Derangement, pp. 221, 228; Dr. Morison's Outlines of Lectures on Mental

Diseases, p. 17.

(*g*) Per Sir J. Nicholl, in *Dew v. Clark*, 3 Add. 90, 91.

ginally, on some slight circumstance, the magnifying of which, beyond all reasonable bounds, is nearly or quite as good in proof of its being a delusion, as the taking up some absurd prejudice, which is utterly *unfounded*, or that rests upon *no* basis. If one whose eyesight is *slightly* affected, conceives, and in spite of all argument persists in and acts under a conception that he is *totally blind*, this is as perfectly a delusion on the part of that person, as if nothing at all were the matter with his eyes. If another, the proprietor of a large domain, on the loss of a comparatively *small* portion, is *convinced to himself* that he has been deprived of the whole of it; if he persists in that conviction, in spite both of argument and of evidence to the contrary—not only so, if he suffers that conviction to poison and preclude his enjoyment of the ample portion that still remains to him, during and throughout all the rest of his life—this is as essentially a delusion on the part of such person, as if he was still in possession of every acre of his original estate.

So, if the parent of a child, *really* blameable to a certain extent in some particulars, takes occasion from this to fancy her a “fiend, a monster, an incarnate devil;” if, moreover, he be found through his whole life acting under and upon that conception, such a parent is as much in a state of morbid delusion, and so of insanity in regard to that child, as if the child’s conduct were wholly irreproachable (*h*).

6. *Partial insanity*.—When delusion exists in the mind of a person on one or more particular subjects, it is termed in law *partial insanity*. In that sense the term is used by Lord *Hale*, who says, there is a partial insanity of mind, and a total insanity. The former is either in respect to things, *quoad hoc vel illud insanire*; some persons, that have a competent use of reason in respect of some subjects are yet under a particular *dementia* in respect of some particular discourses, subjects, or applications; or else it is partial in respect of degrees; and this is the condition of very many, especially melancholy persons, who, for the most part, discover their defect in exces-

(*h*) Per Sir *J. Nicholl*, in *Dew v. Clark*, 3 Add. 180, 181; and report of S. C. by Hagg. 27.

sive fears and griefs, and yet are not wholly destitute of the use of reason; and this partial insanity seems not to excuse them in the committing of any offence for its matter capital; for doubtless, most persons that are felons of themselves, and others, are under a degree of partial insanity when they commit these offences. It is very difficult to define the invisible line that divides perfect and partial insanity; but it must rest upon circumstances, duly to be weighed and considered both by judge and jury; lest on the one side, there be a kind of inhumanity towards the defects of human nature; or, on the other side, too great an indulgence given to great crimes: and the same learned Judge adds, “that the best measure is this—such a person as labouring under melancholy distempers hath yet ordinarily as great understanding, as ordinarily a child of fourteen years hath, is such a person as may be guilty of treason or felony” (*i*).

The law recognises partial insanity; and, in civil cases, this partial insanity, if existing at the time the act is done, if there be no clear lucid interval, invalidates the act, though not directly connected with the act itself: but, in criminal acts, it does not excuse from responsibility, unless the insanity is proved to be the very cause of the act (*k*). It is stated in *Hadfield's* case, that there is a wide distinction between civil and criminal cases. If, in the former, a man appears upon the evidence to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but, to deliver a man from responsibility for crimes, above all, for crimes of great atrocity, this rule does not apply, however well established when property only is concerned; but the relation between the disease and the act should be apparent. And a party ought not to be protected from answering criminally for acts which can justly be ascribed to malignant motives, and not to the dominion of disease.

(*i*) 1 Hale's P. C. 30.

ported by Hagg. p. 13; S. C. 3 Add.

(*k*) This doctrine is recognised by

93.

Sir *J. Nicholl*, in *Dew v. Clark*, re-

The doctrine of partial insanity is applicable to civil cases generally, although an attempt to shew the contrary was made in a recent case (*l*), and will avail to defeat a will, the direct offspring of that partial insanity, both in the Courts of common law, and in the Ecclesiastical Courts (*m*).

This subject is clearly elucidated by the observations of Lord *Lyndhurst*, C., on an application for a commission of review, for the purpose of impeaching a judgment of Sir *J. Nicholl*. His Lordship said, "The only point of law which has been agitated, has arisen out of an expression made use of by the learned Judge in the Court below. He speaks of *partial insanity*: and it was contended at the Bar, that a case of partial insanity would not be a sufficient ground to lead a Court to set aside, or to justify a Court in setting aside a will; and that the doctrine of partial insanity is not known to the law of England. I think I am stating correctly the argument of counsel with respect to this point, according to the apprehension which I entertained of it, at the time when the term *partial insanity* was reiterated over and over again, as expressing the ground of Sir *John Nicholl's* judgment. But I think the argument founded upon that phrase proceeds upon a misapprehension of what was meant by the learned Judge who occasionally used it. I have read his judgment with great attention, and I collect from it that his meaning is this: that there must be unsoundness of mind in order to invalidate a will, but that the unsoundness may be evidenced in reference to one or more subjects. It seldom happens, he says, that a person who is insane, displays that insanity with reference to every question and every subject; it shews itself with reference to particular subjects, and sometimes with reference to only one individual subject; it sometimes displays itself with reference to one subject very decidedly and very generally, perhaps, with reference to other subjects. All that the learned Judge meant to convey was, that it was no objection to the imputation of unsoundness, that it manifested itself

(*l*) 3 Add. 93.

(*m*) *Greenwood's* case, 13 Ves. 89;

3 Br. C. C. 444; 3 Curt. App.;

Dew v. Clark, 1 Add. 274; S. C.

3 Add. 79; *Heath v. Watts*, Prerog.

1798; Deleg. 1800; see *post*, ch. vii.

sect. 6.

only, or principally with reference to one particular question or one particular person; and he illustrates his position by a variety of cases, some of them of public notoriety, and known to us all. This construction does not rest on any general reasoning, because, for the purpose of avoiding misapprehension, and as if his attention had been directed to the very point, he himself in the course of his judgment, explains in distinct terms what he meant by the term *partial insanity*. 'It was said,' he observes, 'that partial insanity was unknown to the law.' The observation could only have arisen from mistaking the sense in which the Court had used that term. It was not meant that a person could be partially insane, and sane at the same moment of time; to be sane, the mind must be perfectly sound, otherwise it is unsound. All that was meant was, that the delusion may exist only on one or more particular subjects. In that sense, the very same term is used by no less an authority than Lord *Hale*, and then, he sets out at length the passage from *Hale*. I think, therefore, the learned Judge has sufficiently explained what he meant by the occasional use of the term *partial insanity*; and with the explanation he has thus in terms given, and with the whole of his argument, and the illustrations he has used, and the cases to which he has referred in support of that argument, I confess I entirely agree. Therefore, upon that which seems to me to be the only point of law, the only thing like a question at law, which was raised, it does not appear to me there has been any error or any mistake in the Court below; and, therefore, there is no reason on that ground why a commission of review should be granted"(*n*).

In all the cases of lunacy which have filled Westminster Hall with the most complicated considerations, the subjects of them have not only had memory, and a perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have, in general been remarkable for subtilty and acuteness. Defects in their reasonings have seldom been traceable, the disease consisting

(*n*) *Dew v. Clark*, 5 Russ. 166, 168; 1 Add. 274; 3 Add. 79; see *post*, ch. vii. on Wills.

in the delusive sources of thought; all their deductions within the scope of the malady being founded upon the *immoveable* assumption of matters as *realities*, either without any foundation whatsoever, or so distorted and disfigured by *fancy* as to be nearly the same thing as its creation. It is true, indeed, that in some, perhaps in many cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of phrensy: these unhappy sufferers, however, are not to be considered by physicians as maniacs, but to be in a state of *delirium*, as from fever. There, indeed, all the ideas are overwhelmed, for reason is not merely disturbed, but driven wholly from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects; or, at least, are wholly incapable of considering their relations. Such persons, and such persons alone, (except idiots), are wholly deprived of their understandings. These cases, however, are not only extremely rare, but never can become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases, reason is not driven from her seat, but distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the place of realities, as not to be dislodged or shaken by the organs of perception and sense; in such cases the images frequently vary, but on the same subject are generally of the same terrific character. Here, too, no judicial difficulties can present themselves; for who could balance upon the judgment to be pronounced in cases of such extreme disease?

Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity may be classed, is, where the delusions are not of that frightful character, but infinitely various, and often extremely circumscribed; yet, where imagination (within the bounds of the malady) still holds the most uncontrollable dominion over reality and fact: and these are the cases which frequently mock the wisdom of the wisest in judicial trials, because, such persons often reason with a subtlety which puts in the shade

the ordinary conceptions of mankind; their conclusions are just, and frequently profound; but the premises from which they reason, when within the range of the malady, are uniformly false;—not false from any defect of knowledge or judgment, but because a *delusive image*, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance because unconscious of attack (o).

Extraordinary instances of delusion on particular subjects with apparent general sanity are related. Two cases of this kind were mentioned by Lord *Erskine*, who said, that he examined, during the greater part of a day, an unfortunate gentleman, who had indicted his brother, together with a keeper of a madhouse at Hoxton, for having imprisoned him as a lunatic, whilst, according to his evidence, he was in his perfect senses. Lord *Erskine* said, that he was, unfortunately, not instructed in what the lunacy consisted, although his instructions left him no doubt of the fact; but, not having the clue, the lunatic completely foiled him in every attempt to expose his infirmity, although he left no means unemployed, which long experience dictated, but without the smallest effect. The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the Judge and jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression; at last Dr. Sims came into Court, who had been prevented from an earlier attendance. From Dr. Sims, the able advocate ascertained that the very man, whom he had been above an hour examining, believed himself to be the Lord and Saviour of mankind; not merely at the time of his confinement, which was alone necessary for his defence, but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. His Lordship then affected to lament the indecency of his ignorant examination, when the lunatic expressed his forgiveness, and exclaimed, with the utmost gravity, and emphasis, in the face of the whole Court, "*I am the Christ*:" and so the cause ended.

(o) *Erskine's* speech in *Hadfield's* trial, 27 Vol. Howell's St. Tr. 1313.

Wood's case, before Lord *Mansfield*, and related upon his authority, is still more extraordinary. Wood twice indicted Dr. Munro for false imprisonment in a madhouse, when, as Wood stated, he was sane. On the first trial, though not till after a long cross-examination without success, yet, on the clue being furnished by Dr. Beattie, his insanity became apparent. The subject of the delusion was the imagination of corresponding in cherry juice with a princess; that having been imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed, of course, no tower, no imprisonment, no writing in cherry juice, no river, no boat; but the whole was the inveterate phantom of a morbid imagination. Wood again indicted Dr. Munro, knowing that he had lost his former cause by speaking of the princess; and such, says Lord *Mansfield*, is the extraordinary subtlety and cunning of madmen, that, when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the Bar, and all the authority of the Court could not make him say a single syllable upon that topic, which had put an end to the indictment before; although he still had the same indelible impression upon his mind, as he signified to those who were near him; but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back (*p*).

“Cases of this kind, (observes Dr. Conolly), are quoted in medical books, to shew the difficulty of proving insanity, but they shew us something more. For, where the difficulty of eliciting a proof of a disordered mind is so great, where the disorder is so limited and so seldom evinced, what possible right can any one have to interfere with, or to imprison any man so afflicted? Assuredly no more right than to imprison a man for being short sighted, or a little lame of one leg. Unless the man, mentioned by Lord *Erskine*, was disposed of, in con-

(*p*) 27 Vol. Howell's St. Tr. 1316.

sequence of his belief in the real presence of the Saviour, to inflict injury on any one or on himself, or unless it led him to neglect his affairs and his family, those who confined him were justly indicted for false imprisonment, and ought to have been punished. An unfortunate gentleman fancies that a princess is in love with him—a very harmless fancy in itself; he wanders about the woods, or spends his romantic days on the banks of a river, and meditates on his passion—surely he might spend his time less innocently than this! He carves the name of his beloved on trees; he indites moving letters to her in cherry juice. He fancies himself debarred from seeing the face he adores, and thinks that he is a prisoner in some high tower which overlooks the flood—fancies foolish enough, but certainly not very dangerous! He commits his letter to the guardianship of the river, and bids the waters ‘flow on,’ and, ere they reach the sea, convey his written words to the bower of his mistress. There is nothing very criminal in all this. But the poor man has money, and relations who want it. Instead, therefore, of being allowed to become tired of his fancies, which he would be in time, he is waylaid, forcibly seized, carried off to a private madhouse, and inclosed within some dismal yard, with none but lunatics for his companions. By some rare accident, an opportunity is given of investigating his real state in a Court of law. Irritated, harassed, vexed, and perhaps of a disposition to shrink from publicity of every kind, every artifice of cultivated and practised minds is exerted to confuse him, and to make him contradict himself; the most dexterous questions, the most artful insinuations are by turns levelled at him. And all in vain; the poor man is simple enough, but shews no madness. At last comes forth some hired wretch who has watched him in his days of idle wandering, observed all his movements, and dogged his path for evidence; and because the suspected man will not abandon his princess, or does not deny the affair of the cherry juice, there arises a sound of triumph among his relatives; learned men felicitate themselves on having discovered what was so difficult to detect; the cause is ended, and the foolish lover is deprived

of his property and of his liberty, and sent back to his horrible imprisonment" (q).

7. *Eccentricity usually accompanies partial insanity.*—Persons partially insane are usually, not to say always, in a high degree eccentric in their general conduct. Hence it is, that great general eccentricity, as the common co-incident, being proved, assists materially in the proof of partial insanity, where partial insanity is suspected to exist. For as persons actually insane in some particulars are commonly highly eccentric in many or most; so persons highly eccentric in many or most particulars, are at least not unfrequently, actually insane in some. People who dwell on the confines of two empires, are likely enough to be found sometimes in the one, and sometimes in the other—and they are the more likely to be so found, when the line of demarcation between the two is under an indefinite and uncertain something, a sort of mist, which renders a transition from the one to the other side of it easy and almost imperceptible—which must always be the case in respect of that actual (though invisible) line of demarcation, (for some such there must needs be), between mere eccentricity, situate on the one side, and downright insanity, being upon the other; in short it is next to impossible, in such a case, to be constantly touching upon the line, without ever going beyond it (r). But eccentricity of character, severity and violence arising from natural temper and passion, do not necessarily prove derangement. In our inquiries upon this subject, it is necessary to be cautious not to confound insanity with mere eccentricity: upon the latter subject the following remarks of Dr. Gooch (s) deserve particular attention. "In considering insanity as an object of legal medicine, it often becomes a question, and sometimes a puzzling one, whether the peculiarity in the mind of the person who is the subject of investigation does or does not constitute unsoundness of mind? On these occasions it is often said, that the peculiarity is not madness, but eccentricity. To form a proper opinion on this question,

(q) See an Inquiry concerning the Indications of Insanity by Dr. Conolly, p. 384.

(r) 3 Add. 182.

(s) Account of the Diseases peculiar to Women, 189. 192.

it is necessary to have an accurate conception, not only of what we mean by the word *insanity*, but also of what we mean by the word *eccentricity*."

Now, the persons who have passed for eccentric, and whom the author last cited has had opportunities of observing, he divides into three classes.

First, those who differ from the rest of mankind, chiefly in their objects and pursuits. Instead of desiring and aiming at the common objects of human wishes, namely, rising in life, the attainment of a competence, the acquisition of wealth and power, they are contented in these respects to remain stationary, and they dedicate the whole of their time and talent to the cultivation of their mind, and the acquisition of knowledge. This peculiarity of pursuit, unless counteracted by much intercourse with polished society, generates various peculiarities in their appearance, habits, manners, and modes of expression; they are careless, often slovenly in their dress, awkward in their manners, singular and often pedantic in the topics and language of their conversation. Such persons are called eccentric, but their eccentricity consists only in their pursuits and manners; it is the simplest and most unquestionable form of eccentricity, and is compatible with the healthiest, happiest, and most vigorous state of mind.

The *second* class consists of persons who differ from the rest of mankind in the singularity of their opinions. With the same materials they draw inferences widely different from those of sensible and competent judges; they are persons of great confidence in their own judgment, defective either in knowledge or in comprehensiveness of mind, and by separating those facts which are favourable to their opinions, by frequent meditation on them, and by keeping out of sight the opposite facts, they at length attain the firmest conviction of their peculiar notions. This process will sometimes carry a man a great way. There is at this time in America, a Captain Symes, who is convinced that the earth is perforated from pole to pole, that the sea flows through, and that the perforation is navigable; and he is said to be planning a voyage to explore it. This form of eccentricity, in a minor degree, is very common; the persons subject

to it are often clever and zealous, but they never possess very superior minds; they have zeal for knowledge, without corresponding sagacity; still they are eccentric, not mad, for they arrive at their conclusions through an intellectual process, though a crooked one. It is a law of the human understanding, that a little evidence perpetually presented to the mind will produce as much conviction as a greater quantity presented rarely.

There is still another class of persons who are called eccentric. Those observed by Dr. Gooch have been remarkable for a high opinion of themselves, quite disproportionate to their apparent powers or actual achievements, for rashness of conduct never corrected by experience; some of them have had singularly calm and sweet dispositions; others have been of stormy tempers, subject to violent gusts of passion from trifling provocations; they have had opinions without any intelligible reasons for them, and have most of them had a peculiarly formal and solemn manner. After continuing many years in this state, and passing among their friends for eccentric characters, they have ultimately become deranged. It need scarcely be observed, that this peculiarity of mind, although constantly mistaken for eccentricity, is, in truth, slumbering undeveloped madness. The signs which ought to create suspicion of this state, are these:—insanity being more or less prevalent in the family; a singularity of manners, opinions, and actions inexplicable by the peculiar pursuits of the individual; enormous self esteem, mischievous schemes obstinately persisted in, and uncorrected by experience.

Sir *H. J. Fust* observed (*t*), in a case where it was necessary to determine whether eccentricity amounted to unsoundness of mind; “it is impossible for Courts of justice to lay down any general rules; but, in the investigation of such cases, they will be often much assisted by the observation and the recorded experience of medical men, who have devoted much time and attention to this disease, and its concomitant symptoms.” The learned Judge considered the case with reference to the follow-

(*t*) *Mudway v. Croft*, 3 Curt. 671; 7 Jur. 979.

ing remarks of Dr. Ray (*u*),—"Mania, then, being a disease, and governed by the same pathological laws as other diseases, it will be incumbent to give some account of its symptoms; and, since we consider a well settled conviction of the above views as having an important bearing on the course of legal decisions, no farther reason will be necessary for going more fully into this part of the subject than at first blush might seem proper for our purpose. So closely are soundness and unsoundness of mind allied, that we are met at the outset by the difficulty of discriminating in some cases between mental functions modified by disease, and those that are peculiar though natural to the individual. Madness is not indicated so much by any particular extravagance of thought or feeling, as by a well marked change of character, or departure from the ordinary habits of thinking, feeling, and acting, without any adequate external cause. To lay down, therefore, any particular definition of mania founded on symptoms, and to consider every person mad who may happen to come within the range of its application, would induce the ridiculous consequence of making a large portion of mankind of unsound mind. Some men's ordinary habits so closely resemble the behaviour of the mad, that a stranger would be easily deceived; as in the opposite case, where the confirmed monomaniac, by carefully abstaining from the mention of his hallucinations, has the semblance of a perfectly rational man. Hence, when the sanity of an individual is in question, instead of comparing him with a fancied standard of mental soundness, as is too often the custom, his natural character should be diligently investigated, in order to determine whether the apparent indication of madness is not merely the result of the ordinary and healthy constitution of the faculties. In a word, he is to be compared with himself, not with others; and if there have been no departure from his ordinary manifestations, he is to be judged sane; although it cannot be denied, that striking peculiarities of character, such as amount to *eccentricity*, furnish strong ground of suspicion of predisposition to madness." Dr. Ray, then refers to obser-

(*u*) Dr. Ray's Medical Jurisprudence, 1839, sect. 92, p. 129.

vations of Dr. Gooch and Dr. Combe on this subject, and continues, "In investigating the nature of insanity, the first caution to be observed, is, not to confound disorders of mental functions with natural qualities which sometimes strongly resemble them. Many men in the full enjoyment of health are remarkable for peculiarities and idiosyncrasies of thought and feeling, which contrast strongly with the general tone and usages of society; but they are not on that account to be held as insane, because the singularity for which they are distinguished is with them a natural quality, and not the product of disease; and from the very unlikeness of their manifestations to the modes of feeling and acting of other men, such persons are, in common language, said to be eccentric. It is true, that, on the principle already explained, of excess in size of some organs over the rest being favourable to the production of insanity, eccentricity involves, all other things being equal, a greater than usual susceptibility to mental derangement; but still it is not mere strangeness of conduct or singularity of mind which constitutes its presence. *It is the prolonged departure, without an adequate external cause, from the state of feeling and modes of thinking usual to the individual when in health, that is the true feature of disorder in mind;* and the degree at which this disorder ought to be held as constituting insanity is a question of another kind, on which we can scarcely hope for unanimity of sentiment and opinion. Let the disorder, however, be ascertained to be morbid in its nature, and the chief point is secured, viz. a firm basis for an accurate diagnosis; because, it is impossible that such derangement can occur, unless in consequence of or in connection with, a morbid condition of the organ of mind; and thus, the abstract mental states which are justly held to indicate lunacy in one, may, in another, speaking relatively to health, be the strongest proof of perfect soundness of mind. A brusque rough manner, which is natural to one person, indicates nothing but mental health in him; but if in another individual, who has always been remarkable for a deferential deportment and habitual politeness, lays these qualities aside, and, without provocation or other adequate cause, assumes the unpolished forwardness of the former, we may justly infer, that his mind is

either already deranged, or on the point of becoming so. Or, if a person, who has been noted all his life for prudence, steadiness, regularity, and sobriety, suddenly becomes, without any adequate change in his external situation, rash, unsettled, and dissipated, in his habits, or *vice versâ*, every one recognizes at once these changes, accompanied as they then are by bodily symptoms, as evidences of the presence of disease affecting the mind through the instrumentality of its organs. It is, therefore, not the abstract act of feeling which constitutes a *symptom*; it is *the departure from the natural and healthy character, temper, and habits*, that gives it this meaning; and, in judging of a man's sanity, it is, consequently, as essential to know what his habitual manifestations were as what his present symptoms are."

8. *The burthen of proof of insanity lies on those asserting its existence.*—The presumption of law is in favour of sanity: and, therefore, if a person has never been subject to a commission of lunacy, nor has had an unsound state of mind imputed to him by his friends or relations, or even by common fame (*v*), the burthen of proof is cast upon those who impeach his understanding. And where a particular transaction is sought to be avoided on the ground of insanity, the evidence of it ought to apply to that particular period; and the question in such a case is, not whether the party had ever been insane before, but whether he was of sufficient sound mind on the day of the contract in question. On the other hand, as the law presumes the state of a man's mind to continue unchanged until the contrary be made manifest; if a person has ever been subject to a commission, or to any restraint permitted by law even a domestic restraint, clearly and plainly imposed upon him in consequence of undisputed insanity, the burthen of proof shewing sanity is thrown upon those who seek to establish a lucid interval, or the soundness of his understand-

(*v*) The imputation of friends or relations, and the idle rumours of the world, are not entitled to any weight or consideration in inquiries of this nature, but ought to be dismissed from the minds of the Judge

and jury; who are bound to form their conclusions from impartial evidence of facts, and not to be led astray by any such fertile sources of error and injustice.

ing (*w*). But where there is satisfactory evidence of the sanity of a party at the time of a contract, the antecedent state of his mind, and the causes of it, may be laid totally out of view (*x*).

Where the party's sanity is impeached and the evidence is conflicting, the question is not, whether the facts adduced in support of it are not in general indications of sanity; but whether they are inconsistent with, or sufficiently explanatory of the indications of insanity produced on the other side, on which undoubtedly the onus lies (*y*).

The observations of Lord *Thurlow* upon the evidence of the competency of a party, after previous derangement had been established, claim attention. His Lordship said—"There is an infinite, nay, almost an insurmountable difficulty, in laying down abstract propositions upon a subject which depends upon such a variety of circumstances, as the legal competency of the mind to the act in which it is engaged, if its competency be impeached by positive evidence of an anterior derangement, or affected by circumstances of bodily debility, sufficiently strong to lead to a suspicion of intellectual incapacity. General rules are easily framed, but the application of them creates considerable difficulty in all cases in which the rule is not sufficiently comprehensive to embrace every circumstance which may enter into and materially affect the particular case. There can be no difficulty in saying, that if a mind be possessed of itself, and that, at the period of time, such mind acted, that it ought to act efficiently. But this rule goes very little way; for it is extremely difficult to lay down, with tolerable precision, the rules by which such state of mind can be tried; but the course of procedure for such purpose allows of rules. If derangement be alleged, it is clearly incumbent on the party alleging it to prove such derangement. If such derangement be proved, or be admitted to have existed at any particular period, but a lucid interval be alleged to have prevailed at the period particularly referred to, then the burthen of proof

(*w*) *White v. Wilson*, 13 Ves. 88 ;
and see Butl. Co. Litt 246, b., n.
(1).

(*x*) 1 Dow. P. C. 177.

(*y*) *Steed v. Calley*, 1 Keen, 620.

attaches on the party alleging such lucid interval, who must shew sanity and competency at the period when the act was done, and to which the lucid interval refers. And it certainly is of equal importance that the evidence in support of the allegation of a lucid interval, after derangement at any period has been established, should be as strong and as demonstrative of such fact, as where the object of the proof is to establish derangement. The evidence in such a case applying to stated intervals, ought to go to the state and habit of the person, and not to the accidental interview of any individual, or to the degree of self possession in any particular act; for, from an act with reference to certain circumstances, and which does not of itself mark the restriction of that mind, which is in general deemed necessary to the disposition and management of affairs, it were extremely dangerous to draw a conclusion so general, as that the party, who had confessedly before laboured under a mental derangement, was capable of doing acts binding on himself and others" (z). Lord *Eldon*, C., is reported to have said, that he could not assent to Lord *Thurlow's* proposition, that where lunacy is once established by clear evidence, the party ought to be restored to as perfect a state of mind as he had before; to be proved by evidence as clear and satisfactory; and supposed the strongest mind reduced by the delirium of a fever, or any other cause, to a very inferior degree of capacity, admitting of making a will of personal estate, to which a boy of the age of fourteen was formerly competent, the conclusion is not just, that, as that person is not what he had been, he should not be allowed to make a will of personal estate. There may be frequent instances of men restored to a state of mind inferior to what they possessed before; yet it would not be right to support commissions against them (a). And in cases where the validity of a deed or other instrument is in dispute, the question is not, whether a man has been insane, but, whether he has recovered such a quantum of disposing mind at the time of execution as ought to give it effect (b).

(z) *Attorney-General v. Parnter*,
3 Bro. C. C. 443; see *post*, ch. vii.
sect. 5.

(a) *Ex parte Holyland*, 11 Ves.
11.

(b) 5 Dow. P. C. 236.

It was contended, in a case, where there was evidence of a lunatic's having had at least one lucid interval, that it was no objection to the admissibility of the presumption that a lease had been surrendered, that the party entitled to the reversion had been found a lunatic by inquisition; because such finding is not inconsistent with the supposition that the lunatic might have had lucid intervals, and that during one of such lucid intervals such surrender might have been accepted (c).

9. *Length of time before sanity of party is questioned, raises a strong presumption in favor of his acts.*—As delay has a tendency to deprive parties claiming under deeds or other instruments of the means of shewing the capacity of the persons who executed them, length of time is an important feature in all cases, in raising a presumption of sanity, where an attempt is made at a distant period to impeach deeds on the ground of the mental incapacity of the parties who executed them.

This principle was laid down by Lord *Eldon*, C., that if property has been disposed of twenty or thirty years before, formally, and with the concurrence and assistance of individuals of good character; and if that disposition has not been quarrelled with as speedily as may be, and only challenged when the parties best acquainted with the whole circumstances of the transaction are dead and gone—it is dangerous to set aside that disposition, at the distance of twenty or thirty years, upon a ground so fallible as human memory and testimony as to the state of the person making that disposition at other moments, without at all applying to the moment when he executed the deed sought to be impeached (d). And therefore, in a case where, on the one side, there was clear and positive evidence of the sanity of a party who executed deeds; and, on the other, only general evidence to impeach them, which consistently with the positive evidence could not be true, the deeds were sustained. Thus, in support of an action brought in 1808, to reduce certain deeds executed between 1782 and 1799, upon the ground of the insanity of the grantor; parol evidence was

(c) *Lopdall v. Creagh*, 1 Bligh's N. S. 266.

(d) 5 Dow. Parl. Cas. 236, 237.

given that he was quite deranged from 1781, till his death in 1804; the evidence applying to his insanity generally, and not to the particular moments when the deeds were executed: and this evidence was encountered by parol evidence of his general sanity during the same period; and the latter evidence corroborated by notes or receipts, written by the grantor, having reference to the contents of the deeds, and shewing that he understood their nature and effect; and also by the deeds themselves, which were rational in his circumstances; corroborated also by the circumstances of the deeds being attested by witnesses of unimpeached credit, who considered the grantor sane, and of his having been, in 1784, served heir, and infeft in the subjects conveyed by the deeds, and having sold part of the lands, and mortgaged the remainder; such transactions having proceeded on the supposition of his sanity, and remaining unchallenged until after the death of the grantor, when an action was brought to set aside the deeds. The Court of Session in Scotland reduced the deeds; but, on appeal to the House of Lords, that decision was reversed, and the deeds were held to be valid (*e*). It obviously becomes much more difficult to ascertain the party's capacity after his death, when the matter is to be determined by the opinions of witnesses, whose faculties and degrees of understanding differ among themselves; and who can no otherwise represent a state of the case for the opinion of others, than by relating instances of conduct and conversations, which, when stripped of the many circumstances that must necessarily attend them, give but a very imperfect idea of the true state of the fact. Where the persons who have prepared deeds and are the attesting witnesses to their execution, are dead, when process is commenced for setting such deeds aside, it will be assumed, in the absence of evidence to the contrary, that they would have sworn that the party was of sane mind when the deeds were executed, and will afford a strong presumption in favour of the sanity of the grantor, although it be attempted to disprove it by general parol testimony of incompetency at other times (*f*).

(*e*) *Towart v. Sellars*, 5 Dow. P. C. 231.

(*f*) 5 Dow. P. C. 245.

Considerable difficulties frequently arise in estimating the testimony of witnesses in these cases, for it often happens, where witnesses are describing the condition of a person at a former period; that those on one side describe the person as being as mad as possible, and those on the other side represent the person as having the strongest and soundest intellect (*g*). A remarkable instance of such conflict of evidence in a case of this nature is reported. On a trial at bar on an issue out of Chancery, *devisavit vel non*, the three subscribing witnesses to the testator's will, and the two surviving ones to a codicil made four years subsequent to the will, and a dozen servants of the testator, all unanimously swore him to be utterly incapable of making a will, or transacting any other business at the time of signing the supposed will and codicil, or at any intermediate time: and, to encounter that evidence several of the nobility and principal gentry of the county where the testator resided, who frequently and familiarly conversed with him during that whole period, and some on the day whereon the will was made; and also two eminent physicians, who occasionally attended him, and who all strongly deposed to his entire sanity, and more than ordinary intellectual vigour, were called as witnesses; and, the attorney who drew and witnessed the codicil, whose testimony had, previously to his death, been perpetuated in Chancery, spoke very circumstantially to the very sound understanding of the testator, and his prudent and cautious conduct in directing the contents of his codicil. The latter evidence prevailed, and the validity of the will and codicil was established, and the three subscribing witnesses to the will were afterwards convicted of perjury (*h*).

10. *Cases of doubtful evidence are to be tried by the test of collateral circumstances.*—Where the evidence in such cases is contradictory, it will be tried by the test of collateral circumstances, as to which there can be no doubt, in order to ascertain how far it is consistent with those circumstances (*i*). Where ten witnesses swear one way, and ten the other, the mode is to

(*g*) 5 Dow. P. C. 242; see *post*, Rep. 365.
ch. vii. s. 1.

(*i*) *Per* Lord Redesdale, 5 Dow.

(*h*) *Lowe v. Joliffe*, 1 Sir W. Bl. P. C. 244.

find out some circumstance which is unquestionably true, and by that to try all the rest (*k*). This principle was mainly relied upon by the Court in a case, where a bill had been filed by an heir-at-law, stating that the testator was incapable of managing his affairs or of disposing of his property by will or otherwise, on account of his defective and weak understanding; and praying that the alleged will and codicil might be declared to have been obtained by fraud and undue influence, and delivered up to be cancelled.

The Master of the Rolls directed an issue *devisavit vel non* (*l*), and the jury on the trial of the issue found a verdict in favour of the will. There had been an application to the Master of the Rolls for a new trial (*m*), which was refused; and, on appeal to the Lord Chancellor, it appeared by the judgment, that the general incompetency of the testator was principally in question. A large number of witnesses had been examined, whose evidence extended over various periods of the testator's life, and up to his decease. The testimony of those witnesses was very conflicting; some of them considering the intellectual capacity of the testator not above that of a child, and others representing him as a man possessed of a retentive memory, of ordinary capacity, and as perfectly competent to manage his affairs.

Tindal, C. J., observed, "Where the question of competency is to be resolved on testimony so adverse and repugnant as the present, (and such repugnance does not consist so much in a contradictory account of single facts, as in the general narrative of transactions extending through the space of a long life), it is useless to argue on each particular fact brought forward on either side, or on the testimony given by each particular witness. The only inference that can be safely drawn, is that which arises from the general effect and tendency of the whole body of proof on each side of the question. The inquiry becomes this, whether the general mass of evidence

(*k*) 1 Bligh, N. S. 78, 79; see Observations of Shadwell, V. C. in *Semple v. London and Birmingham Railway, Co.*, 1 Railw. C. 130.

(*l*) *Tatham v. Wright*, Reg. Lib. B. 1828, fol. 2422.

(*m*) 8th November, 1830.

tending to establish the weakness and imbecility of the testator's mind, or that which tends to establish his competency, such evidence on each side extending through his long life, is entitled to the preference? And in solving such a question, it must be admitted that, even in this view of the case, it would be extremely difficult to draw a conclusion, from parol evidence so contradictory and conflicting as that in the present case, upon which reliance could be placed with perfect safety. If, however, it were absolutely necessary to decide this question on the judgment and opinion of the witnesses examined on each side as to the capacity of the testator, much would depend on the situation in life and character of the respective witnesses, on the opportunities they respectively had to form any judgment upon the testator's understanding, and their ability to form a correct judgment; upon the degree of intimacy between the respective witnesses and the testator, the nature of their intercourse, and their habits of life together; upon the period during which their acquaintance continued, and, above all, the comparative closeness with which it is brought down to the time of making the will and codicil; in all which several particulars, if the evidence which has been given on each side, should be weighed and balanced together; it is sufficient at present to observe, that there was a greater power and better opportunities of forming a correct judgment as to the testator's capacity on the part of the witnesses called by the plaintiff, than of those called on the other side. But it appears to us to be unnecessary, on the present occasion, to have recourse to a mode of investigation so difficult. For where the question is left in doubt upon the parol testimony, and the facts of the case will warrant it, it is the safer course to try the question by the evidence of collateral facts which are not involved in the contradiction raised by the parol evidence. Such an appeal, at the same time, resolves directly the question at issue between the parties, and also determines incidentally to which class of witnesses, where they are repugnant and contradictory, the preference is to be given. Such was the rule applied by Lord *Redesdale*, in the case of *Towart v. Sellers* (n), and

(n) 5 Dow. 231, *ante*, pp. 59, 60.

it is obviously a rule founded on sound reason and common sense" (*n*).

On an issue to try, whether a testator had, at any period between the time of his attaining his full age and the time of his death, possessed ordinary powers of understanding, letters written and sent to him during this interval, and found among other papers of the testator, in his room after his death, by persons acquainted with him, and since deceased, are not receivable in evidence, to shew that he was rational and intelligent at the several times when he was addressed as such by the writers, without some previous proof that the testator did some act upon the letters, or with reference to them, that is, some act of an intelligent man. Such previous proof is indispensably necessary; without it, the letters could only be produced in evidence, as shewing that the deceased wrote to him as possessing understanding—or, in other words, as shewing their opinion of his sanity; and in that point of view they would clearly be inadmissible (*o*).

On a subsequent occasion the Court recognized the rule, that letters written and sent to the testator, concerning whose competency the inquiry arises, from parties acquainted with him, are not of themselves, and without some act of the testator in respect of such letters, admissible in evidence, to prove his competency; but that any, the least act, done by the testator with reference to the letters produced, would give them admissibility. And the ground upon which such rule is placed by the Court, was considered to be satisfactory, viz., that such letters amount to no more than treatment of the testator, without any proof of his being conscious of such treatment, or as amounting to no more than a parol conversation with him, which is not shewn to have reached his ear; and thus, to indicate no more than the mere opinion of the writer upon the state of mind of the testator; which opinion is inadmissible upon the ground—first, that it is not given upon

(*n*) *Tatham v. Wright*, 2 Russ. & 7 Ad. & Ell. 313, 408; 4 Bing. Myl. 20—22. N. R. 489.

(*o*) *Wright v. Doe d. Tatham*,

oath; and secondly, that it has not been subjected to the test of cross-examination. But if it is once shewn that the letters were *read* by him, so that he could exercise any act of judgment upon their contents; or if it is shewn that he did exercise any act of judgment and reason, as by *answering* them, or by *acting upon* them; in each and every of these cases the letters are admissible in evidence; such evidence varying in its weight upon the subject of inquiry, according to the degree of judgment and capacity which is imported by such acts done; but all such letters being admissible to the jury, who will give the proper degree of weight to the evidence in each particular case. The question therefore with respect to the admissibility of the three letters comes to this; Is there any evidence stated to the Court, from which it can be inferred that the contents of these letters or any of them, were ever perused by the testator, and by that means submitted to the exercise of his understanding and reasoning powers? or, Is there any evidence of his doing any act with reference to them, which may, according to the nature of such act, import the exercise of a larger or smaller extent of reasoning power? (*p*)

11. *How far suicide is to be considered as evidence of insanity.*—The notion is prevalent, that whoever commits suicide is under the influence of insanity: it being supposed impossible for a person in his senses to do an act so repugnant to reason and nature (*q*); but this notion is rejected by other legal writers, and treated as a vulgar error (*r*).

It has been said that the excuse of insanity ought not to be strained to that length, to which it is sometimes carried by the coroner's juries, namely, that the very act of suicide is an evidence of insanity; as if every man who acted contrary to reason had therefore no reason at all. For the same argument would prove every other criminal *non compos*, as well as the self-murderer. But, on account of the forfeiture incurred by a *felo de se*, very slight evidence

(*p*) *Wright v. Doe d. Tatham*,
4 Bing. N. C. 566-7; 6 Scott, 58,
see p. 133; see *Wheeler v. Alderson*,
3 Hagg. Eccl. R. 609; *Waters v.*

Howlett, Id. 790; 1 Ad. & Ell. 8.

(*q*) *Rex v. Saloway*, 3 Mod. 100.

(*r*) 1 Hawk. P. C. c. 27, s. 3;
Comb. 2, 3.

evidence of derangement at the time will warrant the jury in finding that fact (*s*).

Lord *Redesdale*, C., expressed an opinion, that insanity is not to be inferred from the mere act of suicide. It was not inferred by law, but must be proved (*t*). But Lord *Eldon* admitted, that it was fair to consider whether, at the time of a contract, the party did not intend to commit suicide; and if it were proved, that he was, at the moment, under the influence of that morbid feeling, it might be a circumstance of considerable weight in leading to the inference of insanity (*u*).

It was held, by Sir *John Nicholl*, in the Ecclesiastical Court, that where there was no evidence of insanity at the time of giving instructions for a will, the commission of suicide three days afterwards did not invalidate it, by raising an inference of previous derangement (*v*).

The will dated and executed on the 15th Nov. 1839, of a testator who was labouring under certain delusions on the three previous days to its execution, and who destroyed himself on the day following (the 16th) while under temporary insanity, was pronounced for, and the costs of the Queen's Proctor, who opposed the will on behalf of the Crown, were refused (*w*).

It cannot with truth be contended, that, in all cases, the mere act of self slaughter should be received as complete evidence of madness. There are instances, no doubt, in which this act has been committed by persons in possession of their reason, and who are consequently considered both by the law, and by mankind in general, as highly criminal (*x*).

For this reason, however, it appears to be manifest, that where there are no circumstances to compel an opposite conclusion, the presumption of law, which is always in favour of innocence, must be for the insanity of any person committing suicide.

In the year 1828, a policy was effected by one W. B. upon

(*s*) 1 East's P. C. 389, 390; see 1 Coll. on Lun. 494, note.

(*t*) 1 Dow. Parl. Cas. 187.

(*u*) Id. 148.

(*v*) *Burrows v. Burrows*, 1 Hagg.

Eccl. Rep. 109; see *Steed v. Calley*, 1 Keen, 620.

(*w*) *Chambers and Yatman v. Queen's Proctor*, 2 Curt. 415.

(*x*) 4 Bl. Comm. 189.

his own life, with a proviso that, "in case the assured should die upon the seas, (except in such passages as were allowed by the rules of the society), or go beyond the limits of Europe, or enter into or engage in any naval or military service whatsoever, unless license should be obtained from a Court of Directors of the society, or should *die by his own hands*, or by the hands of justice, or in consequence of a duel, &c., &c., the policy should be void." In 1838, the assured being at the time of unsound mind, precipitated himself from Vauxhall bridge into the Thames and was drowned. In an action brought by his executor upon the policy, the jury found that the assured "voluntarily threw himself into the river, knowing at the time that he should thereby destroy his life, and intending thereby to do so, but at the time of committing the act he was not capable of judging between right and wrong:"—It was held by three Judges, that, upon this finding the defendant was entitled to the verdict—the proviso embracing *all* cases of *intentional* self destruction. *Tindal, C. J.*, differed from the rest of the Court, and founded his opinion upon the consideration, that the insurers intended by the proviso to confine their exemption from liability to the case of felonious suicide only, that if they intended the exception to extend both to the case of felonious self destruction and self destruction not felonious, they ought so to have expressed it clearly in the policy; and that, at all events, if they have left it doubtful on the face of the policy whether it is so confined or not, that doubt ought in his opinion to be determined against them; for it is incumbent on them to bring themselves within the exception, and if their meaning remains in doubt, they have failed so to do (*y*).

12. *Evidence of insanity in other members of the family whether admissible.*—It seems that evidence, for the purpose

(*y*) *Borradaile v. Hunter*, 5 Scott, N. R. 418, see p. 447; 5 Man. & G. 639; 7 Jur. 443; *Dorma v. Borradaile*, arising out of the same case, was argued in C. P. 29 May, 1846, on a special case from the Court of Chancery; see *Hales v. Petit*,

Plowd 262. It has since been decided that the word "*suicide*" in a policy of insurance, includes all cases of voluntary self-destruction, whether the party was sane or not. *Clift v. Schwabe*, 16 June, 1846, Exch. Ch.

of shewing that insanity had prevailed in some other members of the family of the party whose sanity is questioned, is not admissible.

This point arose in a case in the House of Lords, on an appeal from the Court of Session in Scotland, where the validity of a marriage was disputed, on the ground of the insanity of the party at the time it was contracted, when it was attempted on the part of the appellant, in aid of his case of constitutional insanity of the party, to go into evidence of the insanity of some of his relations by his mother's side: but this was resisted by the Commissioners, and also upon review by the Court of Session. One ground of appeal was, that the appellant ought to have been allowed the further proof of the party's insanity, by shewing that it was constitutional in his mother's family, because it was clearly a relevant fact.

Lord *Eldon*, C., said, the first question was, whether the party was of sound mind at the time when he entered into the contract? If not, the contract certainly could not be valid; his opinion, however, was, that the party was of perfectly sufficient soundness of mind to form a valid contract; and that would dispense with the consideration of the other very delicate point, whether the evidence to shew hereditary insanity in the blood ought to have been received in a case of this nature (z).

In the case last cited, Sir *Samuel Romilly* is reported to have stated in argument, that, on a trial in the Common Pleas, the heir-at-law offered to prove hereditary insanity against a testator, but that such proof was rejected (a).

With the view of shewing that a party was not competent to execute a deed, it was proposed to ask a witness whether the sister of such party was not insane, but the Court would not allow the question to be asked (b).

Admitting insanity to be, in many instances, an hereditary disease, yet, considering the number of other causes by which it is produced, and which can in many cases be satisfactorily ascertained, it would not be just to infer, without other clear

(z) *M'Adam v. Walker and Others*,
1 Dow. P. C. 148.

(a) *Id.* 174.

(b) *Doe d. Mather v. Whitefoot*,
8 Carr. & P. 270; see *Oxford's case*,
9 Car. & P. 547.

evidence, because the ancestor or other relative of a party had been so affected, that the descendant is so also. If such facts were admissible in evidence, the inquisition finding the ancestor of unsound mind, although founded on imbecility arising from old age and an incapacity to manage his affairs merely, or from some accidental cause quite independent of constitutional predisposition, might be adduced in evidence on a trial respecting the sanity of his descendant, whilst the grounds, upon which the former verdict was founded, would not appear, and an unjust prejudice might be thus created. The safer course is to obtain satisfactory evidence of the actions and state of mind of the party whose sanity is questioned.

The Ecclesiastical Court has admitted an article pleading the hereditary constitutional insanity existing in the family of the deceased; intending thereby to raise an inference that it is not improbable that the deceased himself should have been insane. In this case the party whose insanity was pleaded was a sister of the whole blood, immediately related to the testator (*c*).

But the Court rejected such an article in the case of collateral relations where evidence must have been gone into on the one hand to shew that there was insanity on the father's side, and none on the mother's; on the other hand to prove that the insanity was solely inherited from the mother, and the evidence must have gone into various collateral matters and issues (*d*).

13. *Control over persons represented as insane not to be assumed without necessity.*—The English constitution has with much care provided protection for persons who are represented to be of unsound mind; and has been extremely cautious to prevent the power of the Crown, or of individuals (*e*), to interfere with such persons, from being assumed in any case where it is not required for the safety of the public and of individuals; because it is difficult to exert such power without depriving the subject of that liberty, and power of dealing with his property, which

(*c*) *Tyrrell v. Jenner*, 2 June, and 16 Dec. 1830. Printed Appeal Cases, 8 Vol. p. 42.

(*d*) *Frere v. Peacocke*, 8 Jur. 998; 3 Curt. 664; *Turner v. Penny*,

21 April, 1843, cited *ib*.

(*e*) See statutes 8 & 9 Vict. cc. 100, 126; which repealed the stat. 9 Geo. 4, c. 40, and 2 & 3 Wm. 4, c. 107.

ought to be unrestricted, unless the necessity for restraint be clearly proved.

It has, in the first place, made it necessary, before a commission of lunacy is issued, that a petition should be presented to the person who is delegated to exercise this authority of the Crown, and imposed on such person the duty of considering whether there is ground for an inquiry or not. It does not allow that individual to declare, that the person is of unsound mind; it calls on him to look through the case which is brought before him, to decide whether or not there is ground for further inquiry: if he finds that there is, the matter then goes to a jury of the country (*f*). Lord *Eldon*, C., laid it down as unquestionable, that the Crown has not, in England, the power of taking upon itself the care of any individuals, either as to their persons or their property, on the ground that they are of unsound mind, without the verdict of a jury (*g*).

But it frequently happens, that persons are in a state in which it is absolutely necessary to throw around them protection, before the opinion of a jury has been obtained upon the question, whether they are, or are not, of unsound mind, and unable to take care of themselves. The Lord Chancellor, therefore, in such cases, upon receiving information making it his duty to interpose, interferes temporarily, for the purpose of taking care of such individuals, until it can be ascertained, upon the acknowledged authority of the verdict of a jury, what is the real state of their minds, and how they are to be permanently treated, with respect to the management of their affairs (*h*).

14. *Evidence of insanity required previously to issuing a commission of lunacy.*—Before a commission of lunacy issues, the duty of that person who has the authority to issue it, requires him to have evidence that the subject of the commission is of unsound mind, and incapable of managing his affairs; and, for that purpose, the evidence of medical men is generally produced. If the question is brought into controversy, the policy of the law determines, that the judgment on which the com-

(*f*) See note, *ante*, p. 37.

see ch. iv. s. 6; stat. 8 & 9 Vict.

(*g*) 2 Wilson & Shaw, 517.

c. 100, ss. 94—96

(*h*) 2 Wilson & Shaw, 515, 520;

mission is issued, is not conclusive against either the property, the person, or any right the subject of it. The person issuing the commission ought at least to have a strong belief that his judgment, should it be called in question, will be affirmed (*i*). But the person exercising this authority is not bound to issue a commission of lunacy whenever the fact of lunacy is established, the object of such a proceeding being the welfare of the party—by granting it, a cure might in many cases be prevented. The true point for the consideration of the person intrusted with that authority is, whether it is really necessary for the benefit of the lunatic, with reference to his mental health and his property, that a commission should issue. Upon this ground, an application for a commission of lunacy against a lady, who was unquestionably a lunatic, under the care of her husband, who opposed the application, was refused; as it appeared that there was not any thing in his conduct with reference to the care of either her property or her person, which rendered such a proceeding necessary (*k*).

On a petition for a commission of lunacy in Ireland, the affidavit of a medical practitioner was read, setting out that the deponent had conversation with the supposed lunatic, and that his language was incoherent, and that he was in deponent's opinion, not of sound mind. Sir *A. Hart*, C., said, "This will not do. The very words which gave the impression of incoherency should be set out. This is the inference, and the affidavit should state the facts (*l*). The precise facts and all the evidences that can be got together, should be laid before me. It is not a matter lightly to be granted. The mere issuing of a commission may produce irritation highly detrimental. It is, therefore, not to issue without great circumspection, and a case made satisfactory to the mind of the Judge, that he has before him proof amounting at least to shew the necessity of further inquiry. I cannot send this case to an inquiry without previously looking into it myself, so as to see that there is sufficient

(*i*) *Sherwood v. Sanderson*, 19 Ves. 286.

(*k*) *Ex parte Tomlinson*, and *Ex parte Broadhurst*, 1 Ves. & Bea. 57; *In re J. B.*, 1 My. & Cr. 538.

(*l*) A medical certificate of insanity should specify the facts upon which the opinion is formed, 8 & 9 Vict. c. 100, s. 46.

to satisfy my own mind of the probability of insanity. Prodigality in the dispersion of property forms no ingredient, provided it appears that the party committing the extravagance, saw that he was doing an improvident thing. I shall desire that he shall be visited by three or four of the most eminent physicians, and shall see and converse with them separately and hear their reports. It is almost the only case in which the Judge is justified and bound to resort to private means of obtaining information."

He said that he had known the worst consequences to result from submitting a case to the jury in the first instance; and, therefore, unless he had reasonable doubts, he would not send it to an inquiry by a jury.

The Court looks at a petition not presented by the nearest relations with particular jealousy, for it implies that the persons who ought to protect the supposed lunatic neglect their duty.

The expenses attendant on these previous steps will be paid out of the fund, should it ever come into the possession of the Crown by the party being found a lunatic (*l*).

The Lord Chancellor, in many cases where the application for a commission is opposed, or the lunacy of the party is not apparent, will, before a commission is granted, make an order for delivery of office copies of the affidavits filed, to two physicians of his own nomination, for their perusal, and for their afterwards visiting and having access to the supposed lunatic for the purpose of examination, and for ascertaining the actual state of his mind, and for their afterwards certifying to the Lord Chancellor in writing the result of such examination, and their opinions on the state of mind of the supposed lunatic, and the grounds upon which they form such opinions (*m*).

It is not a proper mode of proceeding, merely to state facts, in a case where the sanity of a party is in question, to medical men, and take their opinion upon these facts, and then leave it to the Court to judge upon those facts and opinions, without any personal examination of the party by the medical men (*n*).

(*l*) *Ex parte Persse*, 1 Molloy, 219.

(*m*) *In re Galloway*, 9 Aug. 1827; *In re Clement*, 14 Aug. 1828; *Ex parte Tomlinson*, 1 Ves. & Bea. 59;

In re Michell, 9 Aug. 1828. There are numerous instances of similar orders.

(*n*) 1 Dow. P. C. 179.

However valuable the testimony of such men may be in questions of insanity, when speaking from personal knowledge and careful observation of the individual, nothing can be more fallacious than to try judicially the condition of any person by a comparison of his alleged symptoms with those which are stated by medical authorities to be usually the concomitants of insanity, or to submit the opinions of medical men, taken upon cases laid before them, with a description of symptoms, as evidence to a Court of justice.

It is often proper to look to the state of the bodily health, not as in itself evidence of mental derangement, but with a view to ascertain what effect it has had on the state of mind of the party (*o*).

It was held in one case, where a party gave rational answers respecting the situation and value of his estates, that the inability to answer the most common question touching figures was not a foundation for granting a commission (*p*). Lord *Eldon*, C., however, said, that the want of power to comprehend the most simple proposition of figures, as that two and two make four, may be more or less evidence of unsoundness of mind; but still its weight and character are to be estimated with reference to age, situation, and all the other circumstances by which it may be affected; and that he did not find it easy to comprehend what some of his predecessors intended, when they intimated that the incapacity proved by the want of power to comprehend the most simple proposition of figures, is not evidence of an unsound mind (*q*).

In order to obtain an estimate of the capacity of individuals supposed to be affected by idiocy, or imbecility of mind, the person exercising his judgment upon this question ought particularly to ascertain the power of the individual's attention; since his knowledge of objects, and his memory of them, will depend on the duration of his attention: it will also be indispensably necessary to investigate his comprehension of numbers; for, without a capacity sufficient for understanding

(*o*) 1 Dow. P. C. 179.

(*q*) *Sherwood v. Sanderson*, 19

(*p*) Lord *Donegal's* case, 2 Ves. Ves. 286.

sen. 407.

something of the first simple rules of arithmetic, it seems impossible to comprehend the nature and value of property, which is represented by numbers of pounds, shillings, and pence. Cases of imbecility of mind, produced in adults, and in those of advanced age, by paralytic or epileptic attacks, and from various affections of the brain, require the same accurate investigation to determine on the competency of such persons to be intrusted with the management of themselves and their affairs.

15. *Inquisitions of Lunacy how far evidence of insanity against third parties.*—An inquisition of lunacy may be given in evidence on the trial of a person charged by an indictment, for the purpose of shewing that the prisoner was insane when he committed the offence (*r*). Such inquisitions are *primâ facie* evidence against third persons, who were strangers to the proceeding. Thus, in a case, where an inquisition of lunacy was offered as evidence to affect the rights of third persons, and objected to as *res inter alios acta*, Lord Hardwicke overruled the objection, and said, that inquisitions of lunacy, and likewise other inquisitions, as *post mortem*, &c., are always admitted to be read, but are not conclusive (*s*). And in an action upon a bond against the executors of the obligor, an inquisition of lunacy has been admitted under the plea of *non est factum*, for the purpose of shewing that the obligor had been a lunatic from a certain time, as found by the inquisition (*t*). So, where a defendant in a suit in equity resisted the specific performance of an agreement, on the ground of insanity, and in support of that allegation an inquisition was produced, by which the defendant was found a lunatic from a period long antecedent to the contract, but with lucid intervals; such inquisition having been taken in the absence of the plaintiff, was held not conclusive upon him, but *primâ facie* evidence of the lunacy; and that it was competent to third

(*r*) *Rex v. Bowler*, O. B. June, 1812, before *Le Blanc*, J., and Lord C. J. Gibbs; see *post*, ch. xii. s. 1.

(*s*) *Sergeson v. Sealey*, 2 Atk. 412.

(*t*) *Faulder v. Silk*, 3 Campb.

126; see *Dane v. Viscountess Kirkwall*, 8 Car. & P. 683. Inquisitions of lunacy are admissible evidence in cases of pedigree. *Hubback on Ev.*, &c. 605, 606.

parties to dispute the fact, and to maintain, that, notwithstanding the inquisition, the subject of it was of sound mind at any period of time over which the inquisition extended (*u*).

An inquisition of lunacy is not conclusive evidence of the precise period at which the lunacy commenced. A. granted B. a power of attorney, dated 4th July, 1834; in 1837, A. is found by inquisition to have been a lunatic from 1st July, 1834, it was held that the power of attorney was valid notwithstanding (*v*).

Where the validity of the marriage of a party, who has been found by inquisition to be of unsound mind, is disputed in the Ecclesiastical Court, the finding of the jury is a circumstance and a part of the evidence in support of the unsoundness of mind at the time of the marriage, but no more; for that Court must be satisfied by evidence of its own (*w*).

In a case where the validity of the marriage was disputed after the death of the party, on the ground of insanity, and a writ *de lunatico inquirendo* had been executed six months after the marriage, and the verdict of a most respectable jury, before whom the party had been produced and examined in person, had found him incapable for two years antecedent to the marriage, and no attempt had been made to impeach such verdict in Chancery; the inquisition so taken was held strong confirmation of the other evidence of insanity (*x*).

A commission of idiocy, and inquisition returned thereon, finding the party not to be of unsound mind, was held not conclusive evidence of his sanity. But the commission, inquisition, and return, together with a fine, *præcipe*, and caption of a fine and warrant of attorney, were held to be conclusive evidence of the capacity of a party to make a warrant of attorney and suffer a recovery, in a case where the issue upon his sanity was joined after his death, and the warrant of attorney and caption thereof appeared to have been made and acknowledged before the Chief Justice at the same time that

(*u*) *Hall v. Warren*, 9 Ves. 609.

(*w*) 1 Hagg. Eccl. Rep. 356.

(*v*) *Ex parte Bradbury, In re Walden*, 3 Jurist, 1108, 1 Mont. & C. 625; 4 Dea. 402.

(*x*) *Browning v. Reane*, 2 Phill. 69, *post*, ch. xi.

the caption of the fine was acknowledged before him; and the tenant to the *præcipe* in the recovery was made by fine (y).

16. *Coroner's inquest—how far evidence of insanity.*—There was a difference of opinion as to the admissibility of a coroner's inquest finding a party a lunatic, for the purpose of defeating his will. Upon a trial at bar of an issue from the Court of Chancery, *devisavit vel non*, to overthrow the will, the defendant insisted that the testator was *non compos* at the time of making it, which was the 29th, having shot himself on the 31st. Among other circumstances, the coroner's inquest, which found him lunatic, was offered to be read. The Court was divided upon the point; two of the Judges deeming it to be admissible, because the parties were not the same, the one being a civil, and the other a criminal proceeding (z).

Sir *E. Coke* is of opinion that an inquisition of *felo de se* taken before the coroner *super visum corporis* is not traversable, and is conclusive upon the executors or administrators of the deceased (a); but the reasons suggested by *Staunford* (b), whom he quotes, are very unsatisfactory. Lord *Hale* is of a different opinion, conceiving it to be a great hardship that an inquisition, which is no more than an inquest of office, taken behind the backs of the executors or administrators of the deceased, should be conclusive (c).

It seems, indeed, to be now fully established that such an inquisition may be removed into the King's Bench by *certiorari*, and traversed by the executors or administrators of the deceased (d). But it is agreed, that no inquisition can be traversed, to make a man *felo de se*, who is found not to be so; and, therefore, if an inquisition find that the party was *non compos mentis* at the time he did the act, neither the King nor his grantee can traverse it (e); although if the verdict be

(y) *Hume v. Burton*, 1 Ridg. P. C. 204.

(z) *Jones v. White*, 1 Str. 68; see 1 Stark. on Ev. 257; 2 Phill. on Ev. 25; 9th ed.

(a) 3 Inst. 55.

(b) *Staunf.* P. C. 183.

(c) 1 Hale's P. C. 416, 417.

(d) 3 Keb. 564, 604; 2 Lev. 152; 1 Vent. 239; Sir T. Jones, 198; 7 Mod. 16; 3 Keb. 489; Br. Traverse, 229; 1 East, P. C. 389; 1 Wms. Saund. 363; *Rex v. Ripley*, Skinn. 45; S. C. 2 Show. 199.

(e) *Anon.* 1 Vent. 239, 278.

obtained by indirect practice of the coroner, a *melius inquirendum* may be obtained before special commissioners, who can proceed upon the testimony of witnesses only, and not *super visum corporis* (*f*). And though the coroner return to the King's Bench an inquisition finding a *felo de se non compos*, yet he is not obliged to return the depositions, unless there be something depending before the Court to make it necessary (*g*).

17. *Evidence of the capacity of a party to do one act not evidence as to another triable by a different jurisdiction.*—The capacity of a party to do one act, is not conclusive as to his capacity to do another, if his capacity as to the other be triable by a different jurisdiction, whether the two acts make one and the same assurance, or are done at one and the same time or not. No two acts can be supposed to be more intimately connected with each other, both in unity of time and of assurance, than a will of both real and personal estates, written upon one and the same piece of paper or parchment, and subscribed by one and the same signature; and yet it is clear law, that though the probate of such a will is conclusive evidence of the sanity of the testator to make such a will of personalty (*h*), yet it is by no means conclusive evidence of his capacity to dispose of his real estate (*i*).

In a case of ejectment against a devisee, where the question turned upon the sanity of the testator at the time of making the will, it was held that an executor who took a pecuniary interest under the will was a competent witness to support it; because the verdict in that case would only have the effect of establishing the will as to the real property. It would not be any evidence in the Ecclesiastical Court, upon a question whether it were a good will as to the personalty: nor would the probate granted to the executor have been any evidence of the sanity of the testator on the trial of the ejectment. In any

(*f*) *Rex v. Hethersal*, 3 Mod. 80; 2 Hawk. P. C. 54, fol. ed.; *Rex v. Bunney*, 1 Salk. 190; 1 Wms. Saund. 363, n. (1); see Jervis on the Office and Duties of Coroners,

283, 284.

(*g*) Case of the *Coroner of Westminster*, 2 Str. 1073.

(*h*) *Partridge's case*, 2 Salk. 552.

(*i*) 1 Ridg. Parl. Cas. 277.

proceeding to establish the will as to personalty, the ejectment would be treated as *res inter alios acta* (*k*).

An executor who took no beneficial interest was held to be a competent witness to prove the testator's sanity (*l*). And so was the wife of an acting executor taking no beneficial interest under the will (*m*), and an executor in trust who had acted under the will was permitted to give evidence in support of the testator's sanity (*n*).

No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof (*o*).

A verdict in an action of ejectment, for the purpose of trying the validity of a will as to realty, is not admissible in a suit respecting the same will in the Ecclesiastical Court (*p*).

There seems to be only one instance in which the capacity of an agent to do one act is conclusive as to his capacity to do another, and that is the case of a fine and a deed leading the uses of such fine (*q*).

18. *Persons skilled in particular science may give evidence of their opinion on facts respecting it.*—Witnesses skilled in any art or science may be called to say what, in their judgment, would be the result of certain facts submitted to their consideration (*r*), but not to give an opinion on things with which a jury may be supposed to be equally well acquainted. Therefore, where the question was whether a physician, in refusing to consult with the plaintiff, had honorably and faithfully discharged his duty to the medical profession, the Court decided that the question ought not to be put. The answer to

(*k*) *Doe d. Wood v. Teage*, 5 Barn. & Cress. 335; *S. C.* 8 Dowl. & Ryl. 63.

(*l*) Dougl. 139.

(*m*) *Bettison v. Bromley*, 12 East, 250.

(*n*) *Lowe v. Jolliffe*, 1 Bl. R. 365.

(*o*) 7 Wm. 4, and 1 Vict. c. 26, s. 17; and see sections 14, 16, of same stat., and 6 & 7 Vict. c. 85,

that statute, however, does not repeal the provisions of the former.

(*p*) *Grindall v. Grindall*, 3 Hagg. Eccl. Rep. 259; *Price v. Clark and Pugh*, Id. 265.

(*q*) 12 Rep. 124; see *post*, ch. vi. sect. 1.

(*r*) *Beckwith v. Sidebotham*, 1 Camp. 117; see *Severn v. Olive*, 3 Brod. & B. 72.

that might depend altogether on the temper and peculiar opinion of the individual witness, and was a point on which the jury were as capable of forming a judgment as the witness himself (*s*).

Coleridge, J., would not concede, though it was not perhaps necessary then to decide the point, that the mere opinion of a witness, even on oath, is, as such, admissible evidence upon a question of competency. Where the decision of that question can be brought to depend upon deductions from scientific premises, those deductions may be heard as opinions by scientific men, the necessity of the case justifying this departure from the general rule; but competency, in the main, is a question of fact, and the jury are to draw their conclusion from the evidence of the facts before them, not from the opinions which others may have formed from facts not before the jury. In practice, where the witness to facts is present, it is by no means uncommon to ask directly for his opinion; such a question it would be idle to object to; for the objection would only lead to a detailed inquiry into particular facts, which the witness is there ready to go into; nothing, therefore, would be gained by it. It does not appear, however, that this question has ever, upon argument, been decided to be correct in form (*t*).

One of the questions proposed to the Judges by the House of Lords, in relation to the law respecting alleged crimes committed by persons afflicted by insane delusion, was:—"Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?" In answer thereto, the Judges stated to their Lordships, that "we think the medical man, under the circum-

(*s*) *Ramadge v. Ryan*, 9 Bing. 333; 2 M. & Scott, 421.

(*t*) *Wright v. Doe d. Tatham*, 4 Bing. N. R. 499, 500; 6 Scott, 69.

stances supposed cannot, in strictness, be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions of a matter of science, in which case such evidence is admissible. But, where the facts are admitted, or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right" (*u*).

On a trial where the defence was insanity, it is reported that the Judges were of opinion, although they did not come to any formal resolution, that a witness of medical skill might be asked, whether, in his judgment, certain appearances were symptoms of insanity, and whether particular acts, proved to have been committed by the prisoner, were likely to produce a paroxysm of that disorder in a person subject to it; and that, by such questions, the effect of the testimony in favour of the prisoner might be got at in an unexceptionable manner. But several of the Judges are said to have doubted whether a witness could regularly be asked his opinion on the very point which the jury are to decide, namely, whether, from the other testimony given in the case, the act as to which the prisoner was charged was, in his opinion, an act of insanity (*v*).

But, in a case, where the prisoner's defence was insanity, a medical man who had heard the trial, was allowed to be asked whether the facts proved shewed symptoms of insanity. The prisoner was indicted under 9 Geo. 4, c. 31, for cutting and maiming his daughter, with intent to murder, maim, and do her some grievous bodily harm. The fact of cutting was clearly proved, and the case for the prosecution disclosed facts and symptoms of insanity arising from religious fanaticism; and it was shewn, that the prisoner had always exhibited the greatest affection for his daughter, until recently before the act, when he had taken up the opinion that he was ordered by

(*u*) 8 Scott, N. R. 603; 10 Clark & Fin, 212; 1 Carr. & K. 136.

(*v*) *Rex v. Wright*, 1 Russ. &

Ryl. Cr. Cas. 456; *Ramadge v. Ryan*, 9 Bing. 335.

the Holy Ghost to shed human blood as the only means of salvation. It was proposed to call a physician, who had heard the whole evidence, to give his opinion as to the insanity of the prisoner. Mr. Justice *Park* doubted whether this could be legally done; but after referring to the case last cited, allowed the physician to be asked whether the facts and appearances proved shewed symptoms of insanity. And the prisoner was acquitted on the ground of insanity at the time the act was committed (*w*).

19. *Evidence of medical men in cases of insanity.*—The evidence of medical men is often required in cases before Courts of Judicature; and however painful it is to be obliged to reveal those secrets, which are confidentially communicated to them, it has been ruled that the confessions of a patient to his physician are not within the protection afforded by the law to confidential communications; and though a medical man would be justly deemed dishonorable, who voluntarily violates confidence reposed in him, he cannot withhold facts, when called upon in a Court of justice (*x*). The forensic duty required of a medical man (*y*), in all cases of insanity, must be to prove or disprove its existence in an individual to whom it may be imputed, or in whom it may be suspected to be feigned. No illustrations can be requisite, to shew why either of these may be the case. The annals of equity furnish many instances of attempts to wrest property from the possessor, or to remove a person from situations to which a greedy eye has been cast by others, on the score of mental incapacity for administration; and criminals have often attempted to elude the penalty of the law by setting up, or allowing to be set up, the plea of insanity. Instances are on record, where the person himself has disavowed the plea, when urged on his behalf by his friends (*z*). The

(*w*) *Rex v. Searle*, 2 Moody & Malkin, N. P. Cases, 75.

(*x*) Peake on Evidence, p. 188; 1 Starkie on Evidence, 105.

(*y*) The duties of medical men, when consulted concerning the state of a patient's mind, are well pointed out by Dr. Conolly, in the

tenth chapter of his work, entitled, "An Inquiry concerning the Indications of Insanity."

(*z*) See Lord *Ferrers'* Trial, 19 Vol. Howell's St. Tr. 947; *Bellingham's* case, Annl. Register, 54 Vol. p. 304. *Reg. v. Pearce*, 9 Car. & P. 667, *post*, ch. xii. s. 1.

resistance of hunger, cold, and sleep, affords perhaps the best test for distinguishing cases of real insanity from cases where the disease is only feigned, and appearances of it put on to answer particular purposes; at least, where this power of resistance is present, there is good reason to conclude that the affection is not feigned. Where lunacy is feigned, it may be impossible to determine that it is so, without watching the patient for some time, when he does not know that he is watched, and by night as well as by day; by which he will almost infallibly be detected.

It has been questioned, whether medical evidence to prove insanity be not inferior to that of other people, who may have had opportunities of observing the individual, where the same opportunities have not been in the power of the practitioner. A writer on this subject observes, that it is to be presumed that no member of the medical profession would directly state an individual to be insane, without being able, satisfactorily to his own reason and conscientious feelings, to exhibit, from his conversation, his actions, or his writings, unequivocal proofs of his derangement (*σ*).

The question irresistibly presents itself—Can no one do this satisfactorily but a medical man? And the author just quoted very shortly adds, “that patient inquiry, daily communication with deranged persons, and attentive observation of their habits, confer the means of judging on medical practitioners. And it must be agreed, that men professionally conversant with these maladies will be better judges of their existence, than those who have derived their ideas in some abstract way, as by reading, or from popular and ill defined notions about madness, melancholy, &c.” The popular bias on this score finds its way into our Courts; and juries, who, though of the intelligent classes, are never of the medical order, would be constantly

There is no disease more easily feigned or more difficult of detection than insanity; and many great men of ancient times simulated it, in order to elude the danger which impended over them, as Ulysses, Solon, and Brutus (the expeller of

the Tarquins); to whom may be added King David, (1 Saml. ch. 21, v. 13); case of Miss Newman, Debates in House of Lords, 27 Feb. 1838, as to feigned madness.

(*a*) Haslam's Medical Jurisprudence, as it relates to Insanity, p. 5.

deciding upon the most inconsistent grounds, were professional opinion in these cases to be overlooked (*b*).

The following question having been put to Dr. Latham, before the committee of the House of Lords—"Is not the consulting two medical men a considerable means of ascertaining the fact, whether the person is insane or not?" He replied—"It may, or it may not be so. There is great difficulty sometimes in ascertaining the fact, whether a person is insane or not. You judge, in the first place, from the conversation that you may have with the lunatic; then, you perhaps may think it necessary to get him into something like a correspondence by letter; you may even then be foiled, and then you are to judge of his general conduct; and it is very seldom, but that, by one or other of those modes, any medical man may make up his mind as to the state in which he is, whether he be sane or insane. But it may sometimes even happen, that none of those three modes will answer the purpose; and then we are obliged to have recourse to the inquiry, whether there be any particular subject, upon which the person is insane or not; and if we get that sort of key note, it is almost impossible that any person can escape us" (*c*).

Unsoundness of mind does not shew itself upon all occasions, nay, it can often only be discovered by probing and close examination, sometimes even requiring the clue or key that will lead to its detection (*d*).

Of all evidence in Courts of justice, that of professional men ought to be given with the greatest care, and received with the utmost caution. Plain facts are level to ordinary understandings, and very simple logic is sufficient to ascertain their relative connexions and separate value; but opinions drawn from recondite branches of human knowledge, and grounded on inquiries with which few comparatively are acquainted, must be regarded as of little weight, unless well strengthened by reasoning that admits of no misconstruction, and supported by

(*b*) Dr. Smith's Principles of Forensic Medicine, p. 428, 2nd Ed.

Lords, 1828, p. 97.

(*c*) Minutes of Evidence before the Committee of the House of

(*d*) Per Sir J. Nicholl, 1 Hagg. Eccl. R. 367.

authority that cannot be controverted. In every case where the balance hangs in equipoise, and doubt hovers on the beam, no man possessed of the common feelings of humanity would endeavour to draw upon his imagination or his science, to supply the lack of direct and positive information. A man of extensive knowledge will deliver his testimony to *facts* in very plain and explicit terms; but when called upon for his *opinion*, in a matter where that opinion is certain of having considerable influence on the fate of others, he will be extremely tender, slow, and circumspect (*e*).

“ The medical man’s evidence, (it is observed by Dr. Haslam), in order to impress and satisfy the tribunal before which his testimony is given, should not merely pronounce the party to be insane, but ought to adduce sufficient reasons, as the foundation of his opinion. For this purpose it behoves him to have investigated accurately the collateral circumstances. It should be inquired if the party had experienced an attack at any former period of his life. If insanity had prevailed in the family. If any of those circumstances, which are generally acknowledged to be causes of this disease had occurred—as injuries of the head, mercurial preparations largely or injudiciously administered, attacks of paralysis, suppression of customary evacuations, &c. It should likewise be ascertained if previous depression of mind had prevailed, resulting from grief, anxiety, or disappointment; and it should not be neglected to collect any written documents, as insane persons will very often commit to writing their feelings and opinions, although they may suppress them in discourse.

“ There appear, however, sufficient criteria to discriminate crime from insanity, although it must be confessed, and such has been the opinion of distinguished legal authority (*f*), that

(*e*) Smith’s Analysis of Medical Evidence, 197.

(*f*) The Hon. Charles Yorke, when Solicitor-General, is reported to have said, “ In some sense, every crime proceeds from insanity. All cruelty, all brutality, all revenge, all injustice is *insanity*. There were

philosophers in ancient times, who held this opinion as a strict maxim of their sect; and the opinion is right in philosophy, but dangerous in judicature. It may have a useful and a noble influence to regulate the conduct of men, to control their impotent passions, to teach

they have often seemed to be intimately blended ; yet there is a partition which divides them, and it is by such well-defined interposition that they are to be separated : for madness, clear and unequivocal insanity, must be established by the medical evidence. It is not eccentricity, habitual gusts of passion, ungovernable impetuosity of temper, nor the frenzy of intoxication, but a radical perversion of intellect, sufficient to convince the jury that the party was bereft of the reason of an ordinary man.

“ Notwithstanding the medical evidence may be incapable, *totidem verbis*, to give a clear definition of madness, so as to be suited to the conception of all persons, and to comprehend the various shapes of this disease, on account of the various notions affixed by different persons to the abstract terms he may employ ; yet it is always in his power to state such perversions of thought, such projects, and such conduct, contradistinguished from that which all men hold to be rational, as shall leave no doubt on the minds of those who are to appreciate his evidence, that insanity exists : and if the person be really insane, it must be from the ignorance or neglect of the medical practitioner if he do not satisfactorily establish his derangement, provided his opportunities of visiting and conversing with the patient have been sufficient” (g).

It certainly is extremely proper, that the inquiries suggested by the author last quoted should be made, but as insanity is not a necessary consequence of all or any of the circumstances which he has mentioned, we must be cautious not to infer its presence from them alone, but extend our inquiries to their actual effect on, and the present state of, the party supposed to be affected with derangement.

them that virtue is the perfection of reason, as reason itself is the perfection of human nature ; but not to extenuate crimes, nor to excuse those punishments which the

law adjudges to be their due.”
How. St. Tr. 19 Vol. 954.

(g) See Haslam’s Medical Jurisprudence, 48 to 51.

CHAPTER IV.

OF THE COMMISSION OF LUNACY.

SECTION I.—*To whom, and in what Manner, Authority is given to inquire whether Persons are Lunatics.*

II.—*Of the circumstances under which the Commission of Lunacy may be issued.*

III.—*Upon whose application the Commission of Lunacy may be directed to issue.*

IV.—*Of the Execution of the Commission of Lunacy.*

V.—*Of the Inquisition under the Commission of Lunacy.*

VI.—*Of Traversing the Inquisition of Lunacy.*



SECTION I.

To whom, and in what Manner, Authority is given to inquire whether Persons are Lunatics.

By the common law the King's officers, his sheriff, coroner, and escheator, were bound, *virtute officii*, to make inquiry concerning any matter which gave the King a title to the possession of lands, tenements, goods, or chattels—a most important trust during the existence of military tenures, when escheats and forfeitures were frequent; and when, upon the death of each of the King's tenants, it became necessary to inquire of what lands he died seised, who was his heir, &c., in order that the Crown might exercise its right of marriage and other privileges. On special occasions writs were directed to them to make the inquiry; and commissioners were sometimes appointed for the same purpose. When idiots and

lunatics came within the jurisdiction of the Crown, the King's title was found in like manner by these officers, assisted, as in other cases, by a jury of the county, whose verdict was called an inquisition, or inquest of office (*a*). The escheator was an ancient officer, so called, because his office is properly to look to escheats, wardships, and other casualties belonging to the Crown. In ancient times there were but two escheators in England, the one on this side of Trent, and the other beyond Trent; at which time they had sub-escheators. But in the reign of Edward the Second, the offices were divided, and several escheators made in every county for life, and so continued until the reign of Edward the Third. And by the statute of 14 Edw. 3, c. 8, it is enacted, that there should be as many escheators assigned as when King Edward the Third came to the Crown, and that was one in every county; and that no escheator should tarry in his office above a year: and by another statute he was to be in office but once in three years. The Lord Treasurer named him (*b*).

In consequence of the oppressive conduct of the escheators, sheriffs, and other King's officers, in seizing into the King's hands the freehold of the subject, who, thereupon, to his intolerable vexation and delay, was driven to seek a remedy by petition to the King, several statutes were passed for protecting the subject against such grievances. The statute 3 Edw. 1, c. 24, provides, that no escheator, sheriff, or other bailiff of the King shall, by colour of his office, without special warrant, disseise any man of his freehold; and if any do, the disseisee may cause the King to amend the same by office, or he may sue out a writ of *novel disseisin*, and the officer, if attainted, shall pay double damages to the plaintiff, and be also grievously amerced unto the King. This act is considered to provide that no seizure shall be made into the King's hands before office found (*c*). By an act of the 29th of Edward 1, it is provided, that where the escheator shall have seised lands into

(*a*) 1 Coll. on Lun. 107; Gilb. Exch. 109.

(*b*) Co. Litt. 13, b. The old sta-

tutes relating to Escheators are collected in Rastall, tit. Escheators.

(*c*) 2 Inst. 206.

the King's hands, and afterwards it be found upon inquest of office by virtue of a writ issuing out of Chancery, that the King has no title to the same, the escheator shall be directed, by another writ, to return such lands, together with the intermediate profits.

By statute 34 Edw. 3, c. 13, it is provided that every escheator shall take his inquests of office of good people and lawful, which be sufficiently inherited, and of good fame, and of the same county where the inquiry shall be; and that the inquests so taken be indented betwixt the escheators and the jurors; and if it be otherwise done, that such inquests be holden for void; and that they be taken in good towns, openly and not privily.

By statute 36 Edw. 3, c. 13, it is provided that where the escheator commit waste on the lands seized into the King's hands, he shall pay treble damages; and, if any person claim such lands, the escheator shall send the inquest into Chancery within a month after the lands are seized, and a writ delivered to him to certify the cause of his seizure into Chancery; and there the claimant shall be heard without delay, to traverse the office, or otherwise shew his right; and the inquests must be taken openly and by indenture. And if the escheator act contrary to that statute, he is to be imprisoned two years, and ransomed at the King's will (*d*).

By statute 8 Hen. 6, c. 16, it is provided, that no escheator or *commissioner* shall take an inquest, but of people returned and impanelled by the sheriff of the county, within which he is escheator or commissioner, under a penalty of 40*l.*; nor shall any lands or tenements which have been seized into the King's hands upon inquests before escheators or commissioners, be in anywise let or granted to farm by the Chancellor or Treasurer of England, or any other officer, until such inquest and verdict be fully returned into Chancery or the Exchequer; but all such lands or tenements shall remain in the hands of the King until the inquests and verdicts be returned, and for one month

(*d*) Brook, Abr. tit. Office devant Escheator, pl. 10.

after such return; and if the parties aggrieved thereby come into Chancery (*e*) and offer to traverse the same, and to farm the lands or tenements so seized, the said lands or tenements may be committed to them, until the issue of the traverse, if they shew good evidence, proving their traverse to be true according to the statute 36 Edw. 3, c. 13, and find sufficient surety to pursue the traverse with effect, and to account with the King for the yearly value of the lands, if the traverse shall be found in his favour; and any letters patent of the lands or tenements made to the contrary to any other person, or let to farm within the said month after the return, shall be void; and the escheators or commissioners are to return the inquests into Chancery, or the Exchequer, within a month after they have been taken, under a penalty of 20*l*.

By statute 18 Hen. 6, c. 6, it is provided, that no letters patent shall be made to any person of any lands or tenements, before inquisition of the King's title therein be returned in Chancery or the Exchequer, if the King's title in the same be not found of record; nor within a month after such return, excepting to those tendering their traverses under the 8 Hen. 6, c. 16; and if any letters patent be made to the contrary, they shall be void (*f*).

By stat. 18 Hen. 6, c. 7, it is enacted, that if any escheator take an office before him, and return not the same into Chancery or the Exchequer, within a month after taking the same, he shall, besides the forfeiture of 40*l*., also pay to the King as much as he is damaged by reason of the not returning such office: and the Chancellor of England is directed to call to his assistance the Treasurer in letting such farms, and for due execution of the statute, 8 Hen. 6, c. 16. It was held, that the

(*e*) This was because, where an office was necessary to entitle the King, the commission must issue out of Chancery, 5 Rep. 52, a.; 12 East, 111.

(*f*) The object of the Legislature plainly was, according to the words of the acts, that in all cases in which the King's title did not ap-

pear upon record, the possession should be open to whoever could claim against the King till the final decision of the right; and the authorities correspond with this object. Staunf. de Pr. Reg. 54, a.; March. 84; Brooke, Office de Escheator, pl. 56; see 12 East, 112.

two last-mentioned statutes extend to the case of an escheat upon the death of the tenant last seised without heirs, where no immediate tenure of the Crown was found by the inquest; and, as the Crown could not grant to a stranger in such a case without office, neither can a plaintiff in ejectment recover upon the demise of the Crown (g).

By the act of the 23 Hen. 6, c. 16, it is provided, that every escheator shall take his inquest of office within a month after delivery of the writs, and that all inquisitions shall be taken in good towns and open places; and no escheator shall take, either privily or openly, for the execution of such a writ, in one county, above 6s. 8d. or 13s. 4d., or more, if his labour and costs require it, so as not to exceed 40s., under a penalty of 40l. And if any man traverse an office taken before an escheator or commissioner, and have a *scire facias* thereof against any patentee, no protection shall be allowed or allowable.

By the statute of the 12 Edw. 4, c. 9, it is provided, that escheators shall have 20l. land in fee in the same county, and shall not make a deputy or farmer, who is not a sufficient man, under a penalty of 40l. This statute not to extend to corporations having the power by charter to appoint escheators.

By the statute of 1 Hen. 8, c. 9, it is provided, that if any escheator or *commissioner* shall return, into any of the King's Courts, any inquisitions or offices concerning lands, tenements, or other hereditaments, not found nor presented by the oaths of twelve men, and indented, and by them sealed, that then the same escheator or *commissioner* forfeit, for every such office or inquisition so returned, 100l. to the parties grieved by any such inquisition or office. And that no escheator or *commissioner*, nor man, do sit, by virtue of any commission, to inquire of lands, except he have lands, tenements, or hereditaments of the yearly value of forty marks, above all charges, upon pain of 20l. And, that every escheator and commissioner shall sit in open and convenient places, according to the statutes there-

(g) Doe d. Hayne v. The King and Redfern, 12 East, 96.

tofore made; and suffer every person to give evidence openly in their presence, under a penalty of 40*l*. And every juryman shall have lands or tenements of the yearly value of 40*s*., within the same shire where the inquiry shall be made, under a penalty of 100*s*. (*h*). And the jury, sworn before any escheator or commissioner, shall receive the counter-panel of the office or inquisition by them presented, indented, and sealed; and the same shall be delivered by the escheator or commissioner, and permitted to rest in the possession of the first person sworn on the said jury, to the intent that the escheator or commissioner may not change or embezzle the offices or inquisitions, under a penalty of 20*s*., to be paid by each of the persons so sworn. And when the jury are ready to give their verdict or presentment, and offer to present the same, the escheator or commissioners, or part of them, shall receive such verdict without delay, under a penalty of 100*l*., and deliver the counter-panel of the indenture to the jury, under a penalty of 100*l*. And, if the clerk of the petit-bag of the Court of Chancery, or his deputy, or other officer there, will not receive the office or inquisition, and put it on the file to remain of record, within three days after it had been received by or offered to him, he shall forfeit for every such default 40*l*.: and the commissioners or escheator shall be discharged of the penalty of 40*l*. for not returning the same, imposed by statute 8 Hen. 6, c. 7, provided he return it within a month after the first month, as the cause may require. And the clerk of the petit-bag, for the time being, shall certify, or cause to be certified, the transcript of every office or inquisition, taken before any commissioners or escheators, to the King's Exchequer, the next Term following the receipt thereof, upon pain of forfeiture, for every such default, of 100*s*.

By 1 Hen. 8, c. 10, s. 3, it is provided, that after office found before any escheator or commissioner, put into Chancery or Exchequer, if any person tendering a traverse to the same office, and desiring to farm the lands, and finding security, and producing evidence to the Chancellor, according

(*h*) See 6 Geo. 4, c. 50, s. 1, 52, 53.

to the statute 8 Hen. 6, c. 16, shall come into Chancery within three months after the office so put into Chancery or the Exchequer, he shall be by the Chancellor thereto admitted; and that then all other grants (within the three months) shall be void.

The ancient mode of proceeding, when the King was informed that a person who had lands was an idiot or lunatic, in order to ascertain the existence of the fact of idiocy or lunacy, was, on a petition to the Lord Chancellor, suggesting idiocy or lunacy in a particular person of competent age, and verified by affidavits of facts, to issue a writ to the sheriff or escheator of the county where his residence was, to try by a jury, and personal examination of the party, whether that suggestion was true or not (*i*). The writs were returnable into the Court of Chancery; the forms of them are various.

The first form of the writ, to the escheator, suggesting that the party "*Fatuus et idiota existit: ita quod regimini sui ipsius, terrarum, tenementorum, bonorum, et catallorum suorum non sufficit,*" directed the inquiry, "*Si A. fatuus et idiota sit, sicut prædictum est, necne; et si sit, tunc utrum a nativitate suâ, aut ab alio tempore; et si ab alio tempore, tunc a quo tempore; qualiter et quomodo; et si lucidis gaudeat intervallis; * * * * et quis propinquior hæres ejus sit, et cujus ætatis.*"

Another form of the writ to the escheator, reciting, "*Quia A. idiota, et adeo impotens ac mentis suæ non compos existit, quod regimini sui ipsius, terrarum, vel aliorum bonorum, non sufficit,*" directed an inquiry—" *Si idiota sit, et mentis suæ non compos, sicut prædictum est, necne.*"

By another form, the inquiry is whether "*Idiota et fatuus a nativitate suâ, an — alio tempore.*"

According to another form, the sheriff is ordered to inquire, whether, &c., "*A nativitatis suæ tempore semper hactenus purus idiota extiterit * * * * an per infortunium vel alio modo in hujusmodi infirmitatem postea inciderit; * * * * et si per infortunium vel alio modo, tunc per quod infortunium, et qualiter, et quomodo, et cujus ætatis fuerit.*"

(*i*) F. N. B. 581, ed. 1652; 2 Vol. p. 232, ed. 1794.

By another form, the sheriff is to inquire whether "*a primævâ ætate suâ fatuus extiterit.*"

In the writ entitled "*De idiota coram consilio,*" the description is, "*Idiota est et non sanæ mentis existit*" (*k*).

It is to be observed, that the language of the writ, supposing a commencement and cause of the calamity unconnected with birth, does not correspond with the description of an idiot generally received, and adopted by Sir *E. Coke* (*l*).

Although a man was found idiot before the escheator or the sheriff, taken by their examination, and that had been returned into Chancery, yet he who was so found idiot might, in person or by his friends, come into the Court of Chancery, or before the Chancellor and the King's council (*m*), and shew the matter, and pray that he might be examined before them, whether he were idiot or not; or he might sue forth a writ out of Chancery to certain persons, to bring him who was so found idiot before the King and his council at Westminster, to be there examined; and if he was brought thither and examined, and found to be no idiot, then the inquisition found before the escheator or sheriff, and also the examination which the sheriff had made and returned thereupon, and the office, became void, without any other traverse (*n*). The same rule applied to an inquisition of lunacy, though the consequences are different (*o*).

Lord *Hardwicke*, C., said, "he could not find one writ directed to the escheator to inquire of lunacy. The escheator was an officer for the Crown revenue, and in case of lunacy, where no profits go to the Crown, the writ was never directed to the escheator" (*p*). This does not however appear to be correct; for, under the first form of the writ to the escheator inserted above, if the party had been found *fatuus et idiota* from a certain period of time, in consequence of an ascertained

(*k*) See Reg. Brev. 266.

(*l*) See 12 Ves. 450, 2nd ed. n. 11.

(*m*) It is said that the words "*coram rege in concilio,*" have been considered to mean the Court of Chancery. *Ex parte Southcot*, Ambl.

(*n*) See F. N. B. p. 583, ed. 1652; 2 Vol. p. 233, ed. 1794; Staundf. de Pr. Reg. 36.

(*o*) *In re Heli*, 3 Atk. 635.

(*p*) *Ex parte Southcot*, Ambl.

cause, and in the enjoyment of lucid intervals, the Crown could have derived no profits under the statute *de prærogativâ regis* (q).

When persons *non compotes mentis* became distinguished into the two classes of idiots and lunatics, distinct commissions in the nature of the old writs were framed for each of them, one *de idiotâ inquirendo*, and the other *de lunatico inquirendo*.

Rights accruing to the Crown by forfeiture and other means were inquirable either by writ or by commission, the latter is more large and general, and has in practice been adopted in preference to the former (r).

Commissioners in Lunacy, now called Masters in Lunacy.—The regular commissioners in lunatics in London, were formerly five in number, and were appointed by the Lord Chancellor. A commission in the nature of a writ *de lunatico inquirendo*, was formerly executed by three of such commissioners, by whom the inquisition found by the jury was taken, signed, sealed, and returned to the Lord Chancellor. Important alterations in this respect have been made. Great inconvenience and expence having been experienced from the practice of directing commissions in the nature of writs *de lunatico inquirendo*, to three or more commissioners, and doubts having arisen whether such commissions could be directed to one commissioner only, the Lord Chancellor or Lord Keeper, was authorised to cause such commissions to be addressed to any one or more persons to make inquisition thereon, and return the same into the Court of Chancery, with the same powers as was before possessed by three or more commissioners in such commission named (s).

The Lord Chancellor is authorised to appoint two fit and proper persons, being respectively serjeants or barristers at law of not less than ten years standing at the Bar, to be called “The Commissioners in Lunacy,” and in future all commissions in the nature of writs, *de lunatico inquirendo*, shall be

(q) 17 Edw. 2, c. 10; see *ante*, pp. 11, 12; West’s Symb. Part 1, s. 370; Vin. Abr. tit. *Lunatic*, (E. 2); 2 Ves. sen. 405.

(r) *Ex parte Southcot*, Ambl. 111; 2 Ves. sen. 405.

(s) 3 & 4 Wm. 4, c. 36, s. 1.

directed or addressed to such commissioners or one of them; and such commissioners shall hold their offices during good behaviour, and shall jointly and severally have, perform, and execute all the powers, duties, and authorities then (5th August, 1842), had, performed, and executed by commissioners named in commissions, in the nature of writs *de lunatico inquirendo* (*t*). Such commissioners are to take an oath before the Lord Chancellor for the due execution of their powers (*u*).

The commissioners to be appointed by virtue of the act 5 & 6 Vict. c. 84, shall execute commissions in the nature of writs *de lunatico inquirendo*, and shall conduct inquiries connected with lunatics or their estates, and shall perform all other duties to be committed to them by virtue of that act, either separately or together, and at such places and within such times and in such manner as the Lord Chancellor shall from time to time order and direct; but that act is not to prevent the Lord Chancellor from issuing any commission in the nature of a writ *de lunatico inquirendo*, addressed to any fit and proper person or persons, in addition to such commissioners so to be appointed as aforesaid, if he shall upon any occasion, deem it proper to do so (*v*).

The Lord Chancellor may from time to time make such orders as to him shall seem fit and proper, for regulating the form and mode of proceeding before and by the said commissioners, and the practice in matters in lunacy: Provided, that a copy of such orders shall be laid before both houses of Parliament within fourteen days after the same are made, if Parliament be then sitting, or if not, within fourteen days after the commencement of the next session of Parliament (*w*).

The salaries of the commissioners are 2000*l.* a year each, payable quarterly out of "The Suitors' Fee Fund Account," and the Lord Chancellor may grant retiring annuities to such commissioners (*x*).

The persons already appointed and hereafter to be appointed under the stat. 5 & 6 Vict. c. 84, whereby the Lord Chancellor was empowered to appoint two persons, to be called "The

(*t*) 5 & 6 Vict. c. 84, s. 1.

(*u*) 5 & 6 Vict. c. 84, s. 2.

(*v*) 5 & 6 Vict. c. 84, s. 5.

(*w*) 5 & 6 Vict. c. 84, s. 7.

(*x*) 5 & 6 Vict. c. 84, ss. 13, 15.

Commissioners in Lunacy," shall after 4th August, 1845, be called "The Masters in Lunacy," and shall take the same rank as the Masters in ordinary of the Court of Chancery (*y*).

All the inquiries and matters connected with the persons and estates of lunatics, after a party had been found a lunatic under a commission, were by the former practice referred to the Masters in ordinary of the Court of Chancery, who examined the matters referred to him, and reported the result to the Lord Chancellor. Such inquiries, except those as to lunatic trustees and mortgagees under the act 11 Geo. 4, and 1 Wm. 4, c. 60, and except where the Lord Chancellor shall otherwise specially direct, are now referred to the Masters in Lunacy for the time being (*z*).

All inquiries in lunacy on the 27th October, 1842, pending before any of the Masters in Chancery, except inquiries under the last mentioned act, and except where otherwise specially directed, were transferred to the Masters in Lunacy (*a*).

All deeds, wills, securities, papers, and documents, in any lunacy, on the 27th October, 1842, left or deposited in the offices of the Masters in Chancery, were ordered to be delivered to the Masters in Lunacy, or to some person by them authorised to receive the same (*b*).

The Master in Lunacy is at liberty from time to time and at the request of either party or otherwise, to make separate reports, or a separate report, and to state any circumstances as to the subject-matter of the report specially, as he shall think fit (*c*).

It is not the practice to except to the Master's report in Lunacy, as in causes in Chancery, but to bring the objections before the Court in a summary way by petition supported by affidavits.

A commission of lunacy is by letters patent under the Great Seal, and until recently was directed to the Commissioners in Lunacy, it may still be directed to special commissioners. A commission in lunacy is now usually directed to the Masters in Lunacy, by which they or one of them are directed to inquire,

(*y*) 8 & 9 Vict. c. 100, s. 2.

(*z*) 2 Order, 27 Oct. 1842.

(*a*) 3 Order, 27 Oct. 1842.

(*b*) 4 Order, 27 Oct. 1842.

(*c*) 16 Order, 27 Oct. 1842.

by the oath of good and lawful men of the county, as well within liberties as without, by whom the truth of the matter may be better known, whether the party against whom the commission has issued is a lunatic, or enjoys lucid intervals, so that he is not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels; and if so, from what time, after what manner, and how; and if the party, being in the same condition hath alienated any lands or tenements or not, and if so, what lands and what tenements, to what person or persons, where, when, after what manner, and how; and what lands and tenements, goods, and chattels remain to him; and of what person or persons, as well the lands and tenements so alienated as the lands and tenements to him retained, are held; and by what service, after what manner, and how, and how much they are worth by the year in all issues, and who is nearer heir, and of what age (*d*). The Masters in Lunacy (or the special Commissioners) or one of them, are further commanded, at certain days and places, which they shall appoint for the purpose, diligently to make inquisition in the premises, and the same distinctly and plainly made, under the seals of them or one of them, and the seals of those persons by whom it shall be made, without delay to send into the Court of Chancery, together with the letters patent. And the sheriff is commanded at certain days and places, which the Masters in Lunacy or special Commissioners shall make known to him, to cause to come before them or one of them, so many and such good and lawful men of his bailiwick, as well within liberties as without, by whom the truth of the matters in the premises may be better known and inquired into (*e*). The commission of lunacy, like all other commissions which pass under the Great Seal, issues from the common law side of the Court of Chancery (*f*), but is prepared by the Secretary of lunatics.

The Lord Chancellor, on issuing the commission, can, if he

(*d*) These words, *and of what age*, are said in practice to be referred to the age of the heir. That doubtful construction is the more questionable, as another form of the writ, by very clear expression, ap-

plies that inquiry to the person who is the subject of the commission; 12 Ves. 451, 2nd ed., n. (11).

(*e*) See the form of the commission in the Appendix.

(*f*) 4 Inst. 80, 81.

thinks proper, order the sheriff to return a special jury of gentlemen of the neighbourhood of the residence of the supposed lunatic (*g*). It is understood, that, without an order for the purpose, the jurors are usually selected from the class of persons who serve on special juries.

No man shall be liable to serve as a juror in any county in England or Wales, or in London upon any inquiry before any Commissioners appointed under the Great Seal, who shall not be qualified according to the act, 6 Geo. 4, c. 50, s. 1, to serve as a juror upon trials at *nisi prius* in such county in England or Wales, or in London respectively (*h*).

Any juryman summoned, and not appearing upon any inquiry before such Commissioners (unless some reasonable excuse shall be proved on oath or affidavit) is liable to a fine not exceeding 5*l.* (*i*).

The direction in a Commission of Lunacy to inquire ‘who is next heir,’ seems to be given, in order that the Crown may know to whom the property ought to be delivered when the necessity of its superintending care has ceased. The inquisition indeed is not conclusive; the person so found to have been heir may not be the heir; the finding of the jury may be wrong; but *primâ facie* he is to be taken as heir (*j*). The jury now usually return their ignorance as to the lunatic’s property, and who is his heir.

Secretary of Lunatics.—The office of Secretary of lunatics and idiots is one of antiquity, and such secretary is a servant to the Lord Chancellor for the time being, and is appointed by parol only, takes no oath of office, and is stated in the Report below to be removable at pleasure (*k*).

It is the duty of the Secretary of lunatics to consider and present all petitions to the Lord Chancellor relating to commissions of lunacy or idiocy, and to all matters arising out of them. Such Secretary attends the Lord Chancellor in the

(*g*) *In re Barnsley*, 1 March, 1743.

(*h*) 6 Geo. 4, c. 50, s. 52.

(*i*) *Ib.* s. 53.

(*j*) *In re Fitzgerald*, 2 Sch. & Lef. 440.

(*k*) See Report of Commissioners

appointed to make a survey of the different Courts in England and Wales, as to the Court of Chancery; ordered by the House of Commons to be printed, 20th Feb. 1815, p. 69.

Court of Chancery, and takes minutes in Court, on the hearing of such petitions as are set down and required to be heard, and draws up the orders; which orders are signed by the Lord Chancellor, whether made in the first instance, as of course, or afterwards, upon the hearing. Such secretary also files all affidavits relating to such proceedings, makes and delivers copies thereof, and enters the petitions answered by the Lord Chancellor, and the orders made by his Lordship, in books kept for the purpose.

Reports made by the Masters in Lunacy to the Lord Chancellor, under the stat. 8 & 9 Vict. c. 100, s. 95, are to be filed with the Secretary of lunatics (*k*). The reports and certificates of the Masters in Lunacy, and the certificates of the taxation of costs in lunacy by the taxing Masters in Chancery, are also filed at the office of the Secretary of lunatics.

Money orders in lunacy are to be drawn up by the Secretary of lunatics, and to state amounts and names at length (*l*).

For the purpose of avoiding, as much as may be, expence and delay in drawing orders in lunacy, no part of the statements in the petition is to be recited in any order, but only the prayer; and

(*k*) See *post*, ch. v. sect. vii. div. 3.

(*l*) Order, 10 Feb. 1834, which is as follows:—"It is ordered and directed, that every order relating to or in anywise concerning or referring to the payment, transfer, or carrying over of any cash, stocks, funds, annuities, securities, or other effects to or into the name of the Accountant-General of the Court of Chancery, to the credit of the name of any person or persons being idiot, lunatic, or of unsound mind, or to the payment, transfer, carrying over, or other disposal by the Accountant-General of any cash, stocks, funds, annuities, securities, or other effects which may be standing in his name to the credit of the matter of any person or persons being idiot, lunatic, or of unsound mind, shall henceforth,

as heretofore, be drawn up by the Secretary of lunatics, and a duplicate of every such order be made by the said Secretary; and such order and duplicate, in the ordering part thereof, shall state the exact sums of money and amount of securities directed to be paid, transferred, carried over, or otherwise disposed of to or by the said Accountant-General in words at length, where the same can then be ascertained, and in all cases where the same cannot then be ascertained, the amount thereof shall be verified by affidavit, or be certified by the Master, as the case may be; and shall also state the Christian and surnames of every person by or to whom the same shall be directed to be paid, transferred, carried over, or otherwise invested, in words at length, without

no part of the Master's in Lunacy report is to be stated in any order, except the Master's finding or opinion; and before any order shall be passed, the original petition or petitions must be filed with the Secretary of lunatics (*m*).

After an order, made on petition has been drawn up, in conformity with the prayer of the petition, the Court will not allow the petition and the order to be amended, but a new petition must be presented, praying for a variation of the order (*n*).

No application is to be made for consent orders in lunacy, until two clear days' notice shall have been given at the office of the Secretary of lunatics (*o*). No petition relating to lunatic trustees shall be heard, unless two days' notice shall be given to such Secretary, and to all parties interested (*oo*).

The duties of the Lunatic office are performed by the Secretary, assisted by clerks.

The hours of attendance at the office of Secretary of lunatics in Southampton Buildings are from ten in the morning till four in the afternoon. The holidays mentioned in the general orders of 8 May, 1845, are said to be observed.

It was formerly the duty of the Clerk of the custodies of idiots and lunatics, to make out commissions of idiocy and lunacy, and to do other acts in relation to such commissions.

The Lord Chancellor was authorized to order that the office of Clerk of the custodies of idiots and lunatics, and the fees thereof

abbreviation, (except in the case of bodies corporate, companies, or societies), in such order, and not merely as petitioners, or the like, (except in cases of payments, transfers, or carryings over, directed to be made to or by representatives), when no probate or letters of administration shall have been taken out at the time of making such order; and the Christian and surnames, or titles of honor, of all such persons, and the titles of all such bodies corporate, companies, and societies, shall be written at length, and without abbreviation in such order; and that upon every

such order, the registrar of the Court of Chancery, shall draw up an order to be acted upon by the Accountant-General, which shall not hereafter contain any of the recitals in the original order, but in all other respects be conformable thereto; and that the order of the said registrar when so drawn up, shall be entered as heretofore with the proper officer of the Court of Chancery."

(*m*) 17th Order, 27 Oct. 1842.

(*n*) *In re Marrow*, 1 Cr. & Ph. 142.

(*o*) General Order, Mich. Term, 1838; Beavan's Ord. Canc. 129.

(*oo*) Order, 23 Feb. 1832.

should cease and determine, and that the Masters in Lunacy, or the Secretary of lunatics should thenceforth perform any of such acts, deeds, matters, and things as had theretofore been performed in execution of the duties of the said office of Clerk of the custodies, and all such acts to be done by the said Masters, and the Secretary of lunatics should, in all respects have the same force and effect as if the same had been done by the Clerk of the custodies or his deputy (*p*).

In pursuance of this act, it was ordered that after Michaelmas Term, 1842, the office of Clerk of the custodies of idiots and lunatics should determine (*q*).

Until further order, all acts, deeds, matters, and things theretofore accustomed to be done in the execution of the office of Clerk of the custodies, as to the several matters following are to be done by the Masters in Lunacy, that is to say :—

Bonds and recognizances of committees and their sureties, and the vacating and delivering up the same.

The bill for the grant of the custody, and for the revocation thereof.

Summoning committees and sureties to account.

Filing and copying committees' accounts, and certifying the same (*r*).

Regulations as to fees taken by the clerks of the Masters in Lunacy, and Secretary of Lunatics.—Such officers, clerks, and messengers in the office of the Masters in Lunacy, as the Lord Chancellor and the Commissioners of the Treasury, or any three of such Commissioners shall determine to be necessary, may from time to time be appointed (*s*).

The Lord Chancellor may from time to time order such fees to be received, and taken by the clerks to the Masters in Lunacy, to be appointed under the act, 5 & 6 Vict. c. 84, and also such fees to be received by the Secretary of lunatics, as the Lord Chancellor shall in either case judge reasonable, and such clerks and secretary may thereafter receive such fees respectively, which are to be paid into the Bank of England, under such regulations, as the Lord Chancellor shall from time

(*p*) 5 & 6 Vict. c. 84, s. 10; see
s. 17.

(*r*) 6 Order, 27 Oct. 1842.

(*s*) 5 & 6 Vict. c. 84, ss. 9, 17.

(*q*) 1 Order, 27 Oct. 1842.

to time order, which sums, when so paid in, shall be placed to the credit of the Accountant-General of the Court of Chancery, to the account intituled, "The Suitors' Fee Fund Account" (*t*).

Until further order, the clerks of the Masters in Lunacy are to take and receive for the business so done, under the sixth order of 27th Oct. 1842, the like fees to those theretofore received in the office of clerk of the custodies for the like business, such fees to be accounted for as thereafter mentioned (*u*).

Until further order, all other acts, deeds, matters, and things, theretofore accustomed to be done in the execution of the office of Clerk of the custodies, are to be (so far as according to the practice for the time being in lunacy, the same shall be necessary to be performed) done by the Secretary of lunatics; and the Secretary of lunatics is to take and receive for the business so done, the like fees to those heretofore received in the office of clerk of the custodies for the like business, such fees to be accounted for as thereafter mentioned (*v*). It has devolved upon the Secretary of lunatics (*inter alia*), to make out commissions of lunacy—writs of supersedeas of such commissions—the grants of the custody of the persons and estates of lunatics, to be passed under the Great Seal and inrolled; to make out a commission or dedimus; to examine witnesses, &c. in lunacy; to file the interrogatories or examinations, and to make copies thereof; and to file, copy, and register, all orders, reports, certificates, and petitions, in lunacy.

Until further order, the following fees are to be taken, but accounted for, by the Secretary of lunatics, viz.:—For every order 2*l.* 10*s.*; for every duplicate of an order requiring to be drawn up in Chancery, 10*s.*; for filing every petition, 10*s.* (*w*).

Until further order, the clerks to the Masters in Lunacy are to take and receive for business done in the Masters' office the like fees to those, for the time being, receivable by the clerks to the Masters in ordinary of the Court of Chancery, for the like business (*x*).

(*t*) 5 & 6 Vict. c. 84, s. 11; sees. 17.

(*u*) 7 Order, 27 Oct. 1842.

(*v*) 8 Order, 27 Oct. 1842. See the list of fees *post*, from which may be collected what duties have

devolved upon the Secretary of lunatics.

(*w*) 18 Order, 27 Oct. 1842.

(*x*) 5 Order, 27 Oct. 1842.

All fees taken and received by the clerks to the Masters in Lunacy, and by the Secretary of lunatics, are to be once in every month paid into the Bank of England, to the credit of the Accountant-General of the Court of Chancery, to the account intituled, “The Suitors’ Fee Fund Account,” the amount thereof to be verified by affidavit (*y*).

Until further order, the clerks to the Masters in Lunacy, and the Secretary of lunatics are to take and receive for the business done under the act, 8 & 9 Vict. c. 100, the like fees to those for the time being received by them respectively, for the like business, by virtue of the act, 5 & 6 Vict. c. 84, such fees are in like manner to be paid into the Bank of England as part of the fees payable under the last-mentioned act (*z*).

Salary of officers and Secretary of Lunatics.—The officers, clerks, and messengers who shall be appointed under 5 & 6 Vict. c. 84, and the Secretary of lunatics and his clerks, shall receive by way of salary for the performance of their several duties, such annual sums as the Lord Chancellor and the Lords of the Treasury shall from time to time fix, and the same, and the allowances to the Masters in Lunacy for their travelling and other expences, and to such Masters, and the Secretary of lunatics for providing offices, and for the other expences incident to the discharge of the duties of their respective offices, as the Lord Chancellor shall think reasonable, and shall from time to time order, shall be paid in such manner as the Lord Chancellor shall direct, under an order of the Court of Chancery, out of the said fund intituled. “The Suitors’ Fee Fund Account” (*a*).

SECTION II.

Of the Circumstances under which the Commission of Lunacy may be issued.

THE object, in issuing a commission of idiocy or lunacy, is to ascertain whether the party shall be allowed to exercise acts

(*y*) 19 Order, 27 Oct. 1842.

(*z*) 8 Order, 1st Dec. 1845.

(*a*) 5 & 6 Vict. c. 84, s. 14; see s. 17.

of dominion over his property, or whether his person and estate shall be taken into the custody of the Crown, for the benefit and safety of the lunatic, and his estate.

Commissions were at first confined to cases of idiocy and lunacy; but, in progress of time, this part of the prerogative was enlarged and extended to one who is *non compos mentis*; but here it stopped; and that at least, the Court of Chancery insisted, must be found, to entitle any one to prosecute a commission—the finding of the jury, that one is incapable of managing his affairs, is not sufficient, but they must expressly find the party to be of *unsound mind* (a).

Lord *Hardwicke*, C., observed, that though he was desirous of maintaining the prerogative of the Crown in its just and proper limits, yet, at the same time, he must take care not to make a precedent of extending the authority of the Crown, so as to restrain the liberty of the subject, and his power over his own person and estate, further than the law would allow. And notwithstanding what had been said of the change of the law, his Lordship thought the prerogative of the Crown and the rule of law still the same, and could not be altered but by act of Parliament; for it was only the form of returns which had been changed by the Court (b).

Lord *Eldon*, C., remarked, that it seemed to have been a very long time, before those who had the administration of justice in this department thought themselves at liberty to issue a commission, when the person was represented as not being idiot or lunatic, but of *unsound mind*, importing by those words the notion that the party *was in some such state as was contradistinguished from idiocy and from lunacy, and yet such as made* him a proper subject of a commission to inquire of idiocy or lunacy. From the moment that was established, it appears however to have been also settled, that whatever may be the degree of weakness or imbecility of the party, whatever may be the degree of incapacity of the party to manage his own affairs—if the finding of the jury is only that the party was of extreme imbecility of mind, and they would not infer from that that he is of *unsound mind*, they have not established a case upon which

(a) Lord *Donegal's* case, 2 Ves. sen. 408.

(b) *Ex parte Barnsley*, 3 Atk. 171.

the Chancellor can make a grant constituting a committee either of the person or of the estate. All the cases decide that mere imbecility will not do, and that incapacity to manage affairs will not do, unless such imbecility and such incapacity amount to evidence that the party is of *unsound mind, and the jury find him to be so* (c).

It seems that the Court did not, in Lord *Hardwicke's* time, grant a commission of lunacy in cases in which it has been since granted. And that of late years the question has not been, in many cases, whether the party is absolutely insane; but the Court has thought itself authorized (though many difficult and delicate cases with regard to the liberty of the subject occur upon that,) to issue the commission, provided it is made out, that the party is unable to act with any proper and provident management, liable to be robbed by any one, under that imbecility of mind, not strictly insanity, but as to the mischief calling for as much protection as actual insanity (d).

There are numerous instances of commissions, the objects of which were clearly persons not lunatic in the strict sense, the disorder of mind arising from causes that could not possibly admit lucid intervals, old age for instance; a glimmering only of understanding left: a state produced by no sudden cause, but by the gradual effect of time upon the mind (e).

Lord *Erskine*, C., thought there ought to be an act of Parliament, not from any defect in the jurisdiction, but on the immense moment that the Lord Chancellor should not assume an authority which did not belong to him by the ancient jurisdiction, as that might press sorely on the liberty of the subject; but, on the other hand, agreed with Lord *Eldon*, that such persons, as above all others are entitled to protection, ought not to go unprotected. He put the case of a man having passed a great and illustrious life, and his faculties decaying by the course of nature, so that he might not be fit to govern either himself or his affairs; and said, it is unseemly, that he should be put upon the footing of a lunatic, and that a commission should issue in *the ordinary course*, which might affect the

(c) *Per* Lord *Eldon*, *In re* The Earl of *Portsmouth*, 22 April, 1815.

(d) *Ridgway v. Darwin*, 8 Ves. 65.

(e) 12 Ves. 447.

families of such persons in other times (*f*). And his Lordship asked, why should not a man be entitled to protection in this second state of infancy, as well as the first? And added, the whole prerogative is this: "That it falls to the King to take care of those who cannot take care of themselves" (*g*).

In one case, the party was not insane; but his mind by years and attention to business was worn out. Epileptic fits may produce a mind in the same state at a much earlier period. Such cases have been thought proper subjects of the writ in the nature of a writ *de lunatico inquirendo*. In another case the commission stood upon the same principle. The party, when he could be kept sober, was a very sensible man, but in a constant state of intoxication he was perfectly incapable, and in a continual state of insanity (*h*).

In determining whether it is proper that a commission of lunacy should issue, the Court is governed solely by the consideration of what is necessary for the protection of the person and property of the party, and has no regard to the possible result of the commission upon the validity of his antecedent acts, or to the motives which have actuated the proceeding. Lunacy with lucid intervals presupposes a continuing malady; but occasional unsoundness arising from accidental and temporary causes, such as excess in drinking, is no ground for a commission. Therefore although a person is of weak mind and has that about him, which, when he is in liquor, or labouring under other excitement, is readily roused into mental unsoundness; yet, such person whilst free from such affection and of sound mind, according to the evidence before the Court, is not the proper subject of a commission of lunacy (*i*).

The trustees under a will, in which a life annuity of 6000*l.* a year, and other considerable benefits were given to a person, who, at the death of the testator, was confined in a lunatic asylum, filed a bill for the directions of the Court, in executing the trusts of the will relative to the lunatic. The Master on a

(*f*) Such is the perishable fabric even of the finest genius, that Lord Somers, the Duke of Marlborough, Dean Swift, and Lord Mansfield, might, at the close of their lives, have been made the subject of such

a commission; see 2 Mad. Ch. 732.

(*g*) *Ex parte Cranmer*, 12 Ves. 449.

(*h*) 8 Ves. 66. But see *Cory v. Cory*, 1 Ves. sen. 19.

(*i*) *In re J. B.* 1 My. & Cr. 538.

reference, reported that the party was of unsound mind, and not competent to the management of his own affairs. The lunatic's wife presented a petition, praying the confirmation of the Master's report, and for a proper allowance out of the annuity. But considering the nature and extent of the lunatic's interest under the testator's will, and the Master's report, the Court was of opinion, that the trustees could not properly proceed in the execution of the trusts of the will with reference to the lunatic, unless a commission of lunacy was taken out against him. The trustees were directed immediately to apply for such commission, and it was referred to the Master to inquire and state what in the mean time would be a proper allowance to be made to the lunatic's wife, out of the annuity of 6000*l.*, for maintaining the lunatic, his wife, and family, and for keeping up a mansion-house and park (*k*).

A suit had been instituted on behalf of the infant children of a testator against his widow and administratrix, for the administration of his estate, and for the appointment of a guardian to the infants, and allowances for their maintenance. The residuary property having been apportioned between the widow and the children—the shares of the latter were carried to their respective separate accounts, and by an order made in the cause in 1814, the mother was appointed guardian of the infant James, and the annual sum of 100*l.* was directed to be paid to her out of the income of his share of the property, for his maintenance during minority. James, on attaining his age of twenty-one years, in 1816, was of unsound mind, and he afterwards remained in the same state. No commission of lunacy had been taken out, and the mother received and applied the annuity of 100*l.* until her death in 1842.

At that time the property of the lunatic consisted of the sums of 4252*l.* Bank 3 per cent. annuities, and about 906*l.* cash standing to his account in a cause to which he was a party, and some freehold property of the value of about 7*l.* per annum. A petition was presented in the cause, praying that the income of the property might be paid to and received by the lunatic's sister (who was sole next of kin), and her

(*k*) Bishop of *Exeter* v. Lord and Lady *Ward*, 2 My. & K. 54.

husband, to be applied by them for his maintenance, or that it might be referred to the Master to inquire into the state of mind, and other circumstances of the lunatic, and to approve of some proper person to receive and apply such income for his benefit, and to inquire and state what annual sum ought to be allowed for his maintenance and support. Lord *Lyndhurst*, C., after adverting to the irregularity which had been committed in continuing the payments to the mother after his minority had determined, said that a commission must be taken out; that whenever the Court had to provide, not simply for a temporary occasion, but for the permanent care and management of a lunatic and his property, it was inconvenient to deviate from the regular practice, and that looking at the amount of the property in this case, the expense of a commission afforded no ground for the application (*l*).

It has been said, that, to support a commission in the nature of a writ *de lunatico inquirendo*, it is sufficient that the party is incapable of managing his own affairs (*m*).

If a man loses his speech by an apoplectic fit, though he shew signs of sense, it is said a commission may be granted against him (*n*).

There may be such weakness of mind as may render a man incapable of governing himself from violence of passion, and from vice and extravagances, and yet not sufficient under the rule of law and the constitution of this country, to warrant the issuing a commission against him (*o*).

In a case where a person had been found a lunatic for the period of ten years past, and who subsequently, and up to a late period, had been, with the knowledge of all persons, who had either any interest in, or feeling about, the management of his affairs, doing all the acts the most sane man was intrusted to do; and with regard to his occupations, amusements, mode of life, and every circumstance belonging to the question of sanity, he had for ten years been permitted to act at his own

(*l*) *Gilbee v. Gilbee*, 1 Turn. & Phill. 121; see *post*, ch. v., sect. vi., div. 2, as to the cases where orders have been made by the Court of Chancery for the maintenance of lunatics not found such by inqui-

sition.

(*m*) *Gibson v. Jeyes*, 6 Ves. 273.

(*n*) Com. Dig. Idiot, (B).

(*o*) *Ex parte Barnesley*, 3 Atk. 173. *In re J. B. ante*, p. 106.

discretion ; and it was then averred, that so long as a particular topic (about a forged will) was not resorted to, for the purpose of inducing him to dissipate his fortune, his family permitted him to act without restraint. Lord *Eldon*, C., observed, “there certainly may be persons, proper objects of this commission, and understood to be so for many years, to whose case, either from true affection or mistaken tenderness, the proper process may not have been applied. There may be persons insane upon particular points, who, if those points are not touched upon, not only act discreetly in their own affairs, but even as trustees for others.” His Lordship added, that he did not doubt the fairness of the motives of the parties, but said, it is of the last consequence, that the officer intrusted with this jurisdiction should be very careful, before he established the lunacy of a person ten years ago, who had during that time been permitted to act as if sane, and to deal with a great variety of persons, all of whom were entangled in the consequences (*p*).

Where a petition was presented, praying for a commission of lunacy to try whether or not the grandfather of the petitioner was in a state of mind sufficiently sound to enable him to attend to the management of his own affairs.—Lord *Eldon*, C., observed, “that it was not an application against the party as a lunatic, in the generally understood sense of that word, but as a person who, from the effect of old age upon his faculties, required something more of providence to be thrown around him for the protection of himself and his property, than his own mind furnished him with. It was necessary that the Court should be satisfied, upon the clearest evidence, that the party was unable to manage his affairs, before it would interfere.” His Lordship did not issue a commission, but directed all the affidavits to be laid before two eminent physicians, whom he named, with a request that they would report their opinion of the party’s state of mind, not in regard of lunacy or idiocy, but as to his power of protecting himself and his property. On a subsequent day, his Lordship said, that it was impossible

for him, under the representation of the physicians, to grant the commission which had been applied for; but as he thought the application was not an improper one, the petition was dismissed without costs (*q*).

It seems, that a commission of lunacy may issue against an infant (*r*); but as the Court of Chancery has power over infant wards of Court and their estates, such a proceeding seems unnecessary during the minority of the ward, except under particular circumstances, when the more ample powers given in lunacy may be required for managing their estates. In one case, a commission of lunacy was granted against an infant of the age of twenty years, where it appeared by the affidavits in support of the commission, that the party had been of very weak intellect from her birth, and that there was no ground to expect that she would ever be of sound mind, or capable of governing herself, or managing her own affairs (*s*).

A person found a lunatic in Jamaica, where his property was situated, having come to England, accompanied by one of his committees, a commission of lunacy was issued against him here. The petition for the commission was presented by an illegitimate sister of the lunatic and her husband. The insanity of the individual was not denied; but it was stated, as an answer to the application, that a commission of lunacy had issued, and was then in force against him in Jamaica, where his property was situated, and where till lately he had resided; that three persons had been appointed his committees in that island: that he had been brought over to this country for the sake of his health; that one of his committees had accompanied him, in order to take care of his welfare and comfort; that, under these circumstances, a commission in England was not necessary for the protection of the lunatic and his property, and therefore ought not to be granted. Lord *Eldon*, C., held,

(*q*) *In re Langley*, 2nd and 13th August, 1822.

(*r*) *Halse's case*, 13 Nov. 1743, cited 2 Ves. sen. 403. On reference to the Order Book in the lunatic office, it appears that the mother of the lunatic had been ap-

pointed his guardian; and on issuing the commission Lord *Hardwicke* made an order that the infant should not be married without the leave of the Court.

(*s*) *In re Flint*, 18 Aug. 1831.

that the commission then existing in Jamaica was no reason why a commission should not issue here. On the contrary, it was evidence of the absolute necessity that there should be somebody authorized to deal with the person and estate of the lunatic. While the lunatic was here, no Court would have any authority over him or his property, unless a commission was taken out (*t*).

A commission of lunacy may be taken out against a person who has an estate in England, although he is resident in another country (*u*).

The domicile of the party against whom a commission of lunacy is applied for, is not material to the question of jurisdiction, though it may be material to the question of discretion, if for instance the party has come here for a short time for a particular purpose (*v*).

If an alien, who is resident, and possessed of property in this country, become insane, the Lord Chancellor has jurisdiction to issue a commission of lunacy with a view to the protection of his person and property.

It appeared, on the application for a commission of lunacy, that the lady, who was the subject of it, was the daughter of a Russian nobleman, and was born in Russia in the year 1807; but her mother, who was a daughter of Lord S., an English peer, having died in giving her birth, she was shortly afterwards sent over by her father to England and committed to the care of her maternal grandmother and aunt, by whom she was accordingly brought up. Her father died in 1826; and in 1829, being about a year after she had attained twenty-one, she exhibited symptoms of mental derangement, and soon afterwards became a confirmed lunatic, in which state however she continued to live under the care of her mother's family without any application being made for a commission of lunacy, until the year 1843, when Prince Bariatinski, her half-brother, came over to this country, and claimed the custody and management of her person and property, insisting that by the

(*t*) *In re Houston*, 1 Russ. 312. sect. 4.

(*u*) *Ex parte Southcot*, 2 Ves. sen.

401; S. C. Ambl. 109; see *post*,

(*v*) *In re Princess Bariatinski*,

1 Phill. 375.

laws of Russia he was entitled to it as the head of his family. In consequence of that claim this petition was presented by her maternal aunt, under whose care she was living, and the petition now came on to be heard, together with a counter petition by Prince Bariatinski, which prayed that a commission might not issue, or if it did, that proper directions might be given as to who was to have the conduct of it; and that the petitioner might in the meantime be allowed access to the lunatic.

Lord *Lyndhurst*, C., said:—"I am satisfied, unless some authority can be cited to the contrary, that the Court has jurisdiction, and that it is its duty to throw protection around the person and property of an individual in this situation. The list of foreign names with which I have been furnished is not quite conclusive of the jurisdiction to grant a commission against an alien; but it is very improbable that all those parties should have been subjects of this country. The Crown does not take possession of the lunatic's property for its own benefit; but it takes it by its officers, for the purpose of applying the income to the party's maintenance, and accumulating the surplus for him in case he recovers, or applying it according to the directions of his will, if he happen to have made one before he became insane. What can be more proper, what more humane, what more consistent with the general character of the law of England, than such a course?

"I think, therefore, a commission ought to issue, and I see no sufficient reason why the aunt, who has hitherto had the care of the lunatic, should not have the conduct of it; but to guard against anything improper, Prince Bariatinski shall have full opportunity of attending and adducing such evidence as he may think necessary for the interest of the lunatic, and in the meantime he shall have access to her (in company, of course, with the medical gentleman), in order to prepare for the investigation" (*w*).

It has been before stated (*x*), that the Lord Chancellor has a discretion in granting or refusing a commission of lunacy,

(*w*) *In re The Princess of Bariatinski*, 1 Phill. Rep. 379; 8 Jur. 157.

(*x*) *Ante*, p. 71.

although the party may be of unsound mind; and Lord *Lyndhurst*, C., refused to grant a commission against a gentleman under the care of his wife, on the ground that it did not appear to be a case of such pressing urgency as to require such a proceeding for the comfort and protection of the supposed lunatic, and might be attended with injurious effects to him (*u*).

With respect to King George the Third, it was provided that if any person, appearing insane, should endeavour by intrusion to gain admittance into the King's usual places of residence, and there should be reason to apprehend danger to the King's person, the Lord Chancellor might direct a commission to issue; and if the jury found such intruder to be insane, his Lordship might order his confinement during such time as there should be reason to apprehend danger to the person of his Majesty (*v*).

It is in many cases very difficult to draw the line between such weakness, which is the proper object of relief in the Court of Chancery, and such as amounts to insanity: however, the denying a commission does not exclude from relief against any deeds or wills, which may be improperly obtained from a person of weak mind (*w*).

SECTION III.

Upon whose application the Commission of Lunacy may be directed to issue.

It has been said, that as the Crown has an interest in respect of persons *non compos mentis*, a commission may be directed to issue upon information by the Attorney-General (*a*).

In one case, a commission of lunacy was granted against a

(*u*) *In re Clement*, 28 April, 1829. A commission was granted by Lord *Brougham* in July, 1831. The party was found a lunatic, and died soon after.

(*v*) 39 & 40 Geo. 3, c. 94, s. 4; see Appendix.

(*w*) 2 Ves. sen. 409.

(*a*) See 1 Coll. on Lun. 125.

person confined in prison, on the application of the Solicitor of his Majesty's Treasury (*b*).

Commissions, however, are usually directed upon petitions preferred by private individuals standing in a near relation to the supposed lunatic, accompanied with affidavits setting forth so many instances of weak or incoherent conduct or language, as raise a strong presumption that the party is incapable, through insanity or mental derangement, of conducting himself rationally, or managing his own affairs.

A husband may prefer a petition for a commission against his wife, and *vice versâ*. A father or mother against a child, and *vice versâ*. Brothers, sisters, uncles, aunts, nephews, nieces, cousins, may prefer petitions for commissions against each other. An executor under a will may prefer a petition for a commission against a legatee under the same will. A trustee under a deed may prefer a petition against his *cestui que trust*. Creditors may prefer a petition for a commission against their debtor (*c*).

Where a person had been tried upon a criminal charge, and acquitted on the ground of insanity, and was thereupon confined in a lunatic asylum under the provisions of 39 & 40 Geo. 3, c. 94, the Lord Chancellor, upon the application of a creditor, issued a commission of lunacy, the party being entitled to property of the value of £600. In such case, the Lord Chancellor has no jurisdiction to interfere in any way except by a commission, and has no power over the person of the individual (*d*).

A commission has also been issued on the petition of the tenant of the supposed lunatic, where there was no doubt that the party was in a state that made him the proper subject of the commission; although it was opposed by his mother under whose care he was residing; and it was alleged that the tenant, being in arrear for rent, had taken such a step with the view of gaining time. Lord *Eldon*, C., observed, that he could not, upon the motives attributed to the petitioner, refrain from giving the lunatic the protection of a commission,

(*b*) *In re M'Lean*, 23rd January, 1806.

(*c*) 1 Coll. on Lun. 377.

(*d*) *In re Pearce, ex parte Clark*, 8 Jur. 89; see *ex parte Hill, In re Brooke*, Coop. C. C. 54, *post*.

as there was no doubt that he was an object of it, being in actual custody, and clearly in such a state that he was incapable of managing his own person or property. His Lordship said, that he did not enter into the motives, the fact being made out that the party required the protection of a commission; and ordered the commission to issue (*f*).

A petition for a commission of lunacy was presented by persons who were strangers to the family of the alleged lunatic. The application was supported by an affidavit, which, besides clearly establishing his lunacy, alleged that he was not properly treated by the persons in whose care he was. It was opposed on behalf of his nearest relations, his brothers and sisters, with whom he lived, and whose conduct towards him had been the subject of flagrant misrepresentations in newspapers and other publications circulated in the neighbourhood where they resided. There was no reason to suppose that the petitioners for the commission had any concern with these publications. Lord *Eldon*, C., was of opinion, that, even upon the statements made by the respondents, a commission ought to issue; and that the costs occasioned by the opposition to it, (except the costs of some affidavits in answer to those filed by the brothers and sisters, which did not arrive till after the hearing of the petition had commenced, and, though stated to the Court, were not taken into consideration in the judgment), should be paid by the respondents. If the scandalous publications, of which the respondents had just reason to complain, had been brought home to the petitioners, that, his Lordship said, would have made a difference in his order with respect to costs (*g*).

The nearest relations of an alleged lunatic will be allowed to have the carriage of a commission, in preference to strangers, unless there be some specific ground of objection (*h*).

In a case where there was a contest for the carriage of a commission of lunacy against a person admitted to be a lunatic, between a person who was his heir-at-law and next of kin, and the sister-in-law of the lunatic, in whose custody he had been

(*f*) *Ex parte Ogle*, 15 Ves. 112.

(*g*) *In re Smith*, 1 Russ. 348.

(*h*) *Ex parte Tomlinson*, *Ex parte*

Broadhurst, 1 Ves. & Bea. 59.

for some time, but who was no relation in blood; the heir-at-law was preferred, according to the ordinary rule, as being most likely to insure the objects of the commission (*i*).

When it appears that the parties applying for the commission are actuated by unworthy or improper motives, it will be a sufficient reason for giving the carriage of it to other persons.

Two petitions were presented, praying that a commission of lunacy might issue. One was the petition of the brother of the alleged lunatic, the other that of his wife; and each asked to have the carriage of the commission. The fact of the insanity was not disputed, the only question being as to the time to which it was to be carried back, the lunatic having made a will giving benefits to his wife. Lord *Cottenham*, C., observed that the law required, and the jury were bound to ascertain, the period at which the lunacy commenced. The wife, however, who denied or questioned the unsoundness of her husband's mind at the time when he made his will, had an interest in not carrying the lunacy so far back as the date of the will; and as the affirmative lay with the brother, his Lordship was of opinion that he should have the carriage of the commission (*k*).

SECTION IV.

Of the Execution of the Commission of Lunacy.

THE Lord Chancellor may from time to time make such order or orders as he shall deem fit, for regulating and fixing the number of the jurymen who shall be sworn to try inquests on commissions in the nature of writs *de lunatico inquirendo*, provided that every inquisition on such commissions shall be found by the oaths of twelve men (*a*).

By statute 1 Hen. 8, c. 8, s. 3, it is directed, that every

(*i*) *In re Green*, 2nd April, 1831. 441.

(*k*) *In re Whittaker*, 4 My. & Cr. (a) 5 & 6 Vict. c. 84, s. 8.

escheator and commissioner shall sit in convenient and open places, according to the statutes (*b*) theretofore made; and that the said escheators and commissioners shall suffer every person to give evidence openly in their presence, to such inquest as shall be taken before any of them, upon pain of 40*l*. And these statutes extend to inquisitions taken before sheriffs (*c*). No inquest can be taken upon the oaths of fewer than twelve jurymen; if twelve jurymen, however, concur in the verdict, it will be sufficient, although others refuse to join (*d*).

When it is ascertained that the state of a party's mind is such as to require the management of his affairs to be placed under the direction of the Lord Chancellor, and it is desired to obtain a commission of lunacy to inquire into the state of mind of the party, a petition signed by the party preferring it, and attested by his solicitor (*e*), and stating the residence and degree of relationship or other connexion which the petitioner bears towards the subject of the commission, that he is now of unsound mind, and the period for which he has been so, must be presented to the Lord Chancellor, praying that a commission of lunacy may issue. Such petition must be supported by the affidavits of medical and other persons, shewing the insanity or unsound state of mind of the party against whom the commission is desired to be obtained, by setting forth such instances of irrational conduct as afford strong proof that he is insane, and incapable of managing his own concerns. The petition and a copy thereof, with the affidavits in support of it, must be left at the office of the Secretary of lunatics, in order to be submitted to the consideration of the Lord Chancellor and to obtain his order thereon.

The affidavits should not be sworn before the petitioner's solicitor. If the Lord Chancellor is satisfied with the evidence, and there is no opposition, an order is endorsed on the petition and the commission issues as of course.

If the person against whom a commission of lunacy is sought to be obtained, or any one on his behalf, has entered a *caveat*

(*b*) 34 Edw. 3, c. 13; 36 Edw. 3, st. 1, c. 14; 23 Hen. 6, c. 17.

(*c*) 4 Rep. 58, a.

(*d*) *Ex parte Wragg*, 5 Ves. 450; see 5 & 6 Vict. c. 84, s. 8.

(*e*) Order in Lunacy, May, 1827.

against its issuing, he will be entitled to have notice of the application to the Lord Chancellor, and to attend and oppose it in the first instance: a *caveat* merely requires notice to be given to the party or his agent of the particular proceeding, is entered at the office of the Secretary of lunatics, costs five shillings, and remains in force one year. So if the petition is by a stranger, or by a relation without the concurrence of the husband or wife (if any) of the alleged lunatic, the petition will be set down for hearing before the Lord Chancellor. The petition, if by a stranger, must be served on the husband or wife. When the petition has been duly served, and the service thereof verified by affidavits (if necessary) the matter is heard in Court by the Lord Chancellor, and an order pronounced thereon (*f*).

In the case of an application for a commission of lunacy against an officer confined in a military asylum, who had no next of kin, it was held to be unnecessary before the inquisition was returned, to serve the Attorney-general on behalf of the Crown (*g*).

Where the Lord Chancellor has directed a commission to issue, the Secretary of lunatics is to prepare it, and it must be passed under the Great Seal, and is delivered to the solicitor, who applied for it. The commission is engrossed on parchment bearing a 5s. stamp.

The following instructions are given by the Masters in Lunacy, for the guidance of the Solicitor in preparing to execute the commission:—

“The commission being obtained from the office of the Secretary of lunatics, the Solicitor should immediately take it, with the office copies of the affidavits on which it issued, to the office of the Masters in Lunacy, at 45, Lincoln’s Inn Fields.

“The solicitor should be able from previous inquiry to inform the Masters what it is considered to be the most convenient place for holding the inquiry. It may be at the present residence of the supposed lunatic, if there be a room

(*f*) Elmer on Lunacy, 2.

(*g*) *In re Early*, 1 Jur. 524.

large enough for the accommodation of the jury, and also room for witnesses; or at some neighbouring Court, or Inn, where the necessary accommodation can be obtained; but it must be so arranged that the supposed lunatic can attend, if desirous of so doing, and at all events that the jury may have easy access to see him. In a town the Masters prefer a Court (if there be one), to an Inn, as leading to less expense.

“On the Solicitor attending them with the above information, the Masters will appoint a convenient day and place for opening the commission.

“When the Masters have made such appointment, one of them will sign the precept and such number of subpœnas for witnesses as the solicitor may deem requisite. The solicitor should then take the precept to the under sheriff of the county to which the commission is addressed.

“It is desirable that the solicitor should some days before the inquisition is held deliver, and read, to the alleged lunatic a notice in writing of the intended inquiry, stating the time and place of its being held, and also explain to such person the nature of the inquiry, and be able on the execution of the commission to prove that he has so done. The object of this notice and explanation is to prevent an adjournment, in case the alleged lunatic should on appearing before the jury express a wish to be represented before them by solicitor or counsel.

“The solicitor should also before the time of opening the commission have informed himself who are the heir and next of kin, what is the property to which the alleged lunatic is entitled, and who ought to be appointed committees, and what ought to be allowed for the maintenance (the particulars of which will be found in the paper of instructions for state of facts); for in the event of the party being found a lunatic, or of unsound mind, the Masters are always desirous whilst the family are at hand, of going into the necessary subsequent inquiries on the spot, and by means of *vivâ voce* evidence” (*h*).

The solicitor prosecuting the commission must prepare a precept, with a seal annexed, on paper, to be signed and sealed by the Master in Lunacy, to the sheriff, directing him to

(*h*) See instructions for state of facts in the Appendix.

summon a jury of twenty-four persons, to make the inquiries directed by the commission. The precept is to be left at the sheriff's office, and the under sheriff will summon the jury.

A summons written on paper, signed by the Master in Lunacy, should be served in the usual way, upon the witnesses whose attendance is required. Blank forms of summonses are furnished at the office of the Masters in Lunacy. The solicitor should obtain the signature of the Master to the necessary summonses, addressed to the several witnesses whom it is proposed to call in support of the commission. A copy of the summons is served upon the witness, the original being produced and shewn to him at the time of service (*h*). If the persons having the supposed lunatic in their custody, refuse or are unwilling to produce him, a warrant for his production at the execution of the commission, written on paper, should be signed and sealed by the Master in Lunacy, the copies of such warrant should be served on such parties as have or are suspected to have the custody of the lunatic's person. On application to the Lord Chancellor, his order may be obtained for the production of the lunatic at the inquiry, and a party disobeying such an order will be guilty of a contempt. The Lord Chancellor will also, on a proper application by petition, order persons who are opposing the commission to have access to the alleged lunatic, in order to enable them to conduct his defence. An inquisition in blank must be prepared on a large sheet of paper.

The Master in Lunacy and jury having assembled to execute the commission, the under sheriff calls over the panel of the jury. The commission is then read, and the jury are sworn well and truly to try and a true inquiry to make concerning the lunacy of the party, and to return a verdict according to the evidence adduced. The Master in Lunacy will explain to the jury the nature of the inquiry they are to make, which may be partly collected from the words of the commission itself; and if they find the party to be a lunatic, the next question is, when he became so, and whether he enjoys any lucid intervals or not.

(*h*) Elmer on Lunacy, 5.

The counsel (if any are employed) for the petition states the case to the jury, with such observations as may be necessary to explain it. The witnesses to prove the lunacy of the party are then examined and cross-examined, as in other cases; the lunatic ought also to be examined by the Master in Lunacy or jury, all other parties being absent; the alleged lunatic has also a right to insist on such examination, and to be present at the execution of the commission. After the lunatic has been examined by the Master in Lunacy and jury, the junior counsel for the petitioner will sum up the evidence, and observe upon it as in other cases. The counsel opposing the commission will then address the jury, and call such witnesses as he may think expedient, either to contradict those on the other side or to prove the sanity of the party. The counsel for the petition will then be entitled to reply, after which the evidence will be summed up by the Master in Lunacy, for the consideration of the jury, twelve of whom must concur in a verdict, whether it be that the party is of sound mind or not. After a verdict has been returned, the inquisition on paper is then signed by the Master in Lunacy and jury, after having been previously read over, and is retained in the possession of the solicitor for the commission, on behalf of the jury. Each special jurymen is entitled to one guinea for his trouble, for every day on which he is engaged in the inquiry. The usual fee to a common jurymen is half a guinea.

No allowance is to be made for dinners to juries who attend on the execution of commissions (*i*).

The jury (or twelve of them at least) having agreed upon their verdict, the inquisition which must be previously prepared and written in duplicate, on paper and parchment, leaving the necessary blanks to be filled up at the time of the inquiry, is then completed by filling up such blanks. These documents are then read over by the solicitor, and if consistent with the verdict of the jury, the paper form is signed (but not sealed) by the jurymen agreeing to the verdict. The dissentient jurors do not sign it. The parchment form (to which

the seals only of the jurors and seal of the Master in Lunacy are attached) with the signed paper, are then handed by the foreman of the jury to the Master in Lunacy, who, thereupon signs each form. The Master annexes the inquisition on parchment to the commission, and the following words, viz. :—"The execution of this commission appears by the inquisition hereunto annexed," are endorsed on the commission and signed by him. The commission and inquisition being so annexed and endorsed, are then filed by the Master's clerk in the Petty Bag Office, where an office copy of the inquisition is obtained.

The fee for filing the inquisition and for the office copy (including 2*s.* 6*d.* for a certificate of filing), is 1*l.* 2*s.* 6*d.* Of this amount 5*s.* is paid to the Master's clerk, who pays it over to the Petty Bag Office on filing the inquisition, and receives a certificate of filing. The solicitor has therefore only 17*s.* 6*d.* to pay at the Petty Bag Office, on taking the office copy of the inquisition. There are no fees payable to the Masters in Lunacy, or their clerks, upon the execution of the commission (*k*).

The common order of the Chancellor directs the commission of lunacy to be executed in or near the place of abode of the supposed lunatic, and a jury of the county and of the neighbourhood where the supposed lunatic lives to be returned to inquire of the lunacy. The general rule is, where the party is resident within the jurisdiction of the Chancellor, not to direct the commission to be executed at any other place than the place of residence of the supposed lunatic (*l*). There are exceptions to this rule, but some satisfactory ground must be made out in evidence by the party contending for such an exception. In one case, where the supposed lunatic had a town and country residence, both in the county of Middlesex, the commission was directed to be executed at or near either of such places of abode as the commissioners should direct (*m*).

In a case where a petition prayed that a commission of

(*k*) *Elmer on Lunacy*, 7, 8.

340; *S. C. Coop. C. C.* 205.

(*l*) *Ex parte Southcot*, 2 Ves.

(*m*) *In re Jervis*, 14 Aug. 1829.

sen. 401; *Ex parte Baker*, 19 Ves.

lunacy, which had issued into Devonshire, might be executed in London, where the alleged lunatic had been about six months; having been removed, as was represented, for the benefit of advice, from temporary residences at Exeter and Teignmouth, his previous residence having been in his father's family in Devonshire—Lord *Eldon* observed, that, without undertaking to say that there could be no exception to the rule last laid down, he had not found any instance in fact where the party was within the realm: and that motives of convenience, with reference to the attendance of witnesses, much more of counsel, ought not to form an exception. His Lordship said, that it was a most improper proceeding, to bring a person into Middlesex for the purpose of executing the commission there; and expressed a doubt, whether he had any right to make the alteration as to the place of executing the commission, after it had issued (*n*).

In one case, Lord *Brougham*, C., took into consideration the convenience of the attendance of witnesses upon the inquiry, and directed the supposed lunatic to be conveyed from London, where he had been some time, to the place of his former residence, where the commission was directed to be executed (*o*).

Where the lunatic's property was small, a commission was directed to issue into Middlesex, although the supposed lunatic was residing in Hertfordshire, in order to save the expense of taking medical witnesses down from London (*p*). In another case where the supposed lunatic resided at Stamford under the care of Dr. Willis, and had never had any fixed place of residence, and lived chiefly in lodgings. The principal witness resided in Middlesex, into which county Lord *Lyndhurst* directed the commission to issue (*q*).

Where a lunatic had resided twenty-eight years in the county where the commission was directed to be executed, an application for changing the county, on the ground that a great many

(*n*) *Ex parte Baker*, 19 Ves. 340;

S. C. Coop. C. C. 205.

(*o*) *In re Green*, 8 April, 1831.

(*p*) *In re Waters*, 2 My. & Cr. 38.

(*q*) *In re Mills*, Feb. 1830, 2 My.

& Cr. 39, n.

witnesses to be produced and examined at the inquiry resided in the latter county was refused (*r*).

If a man, resident in the city of London, were conveyed by force into Essex, he would still, for the purpose of executing a commission, be considered as resident in the city; for a man cannot be said to reside in a place to which he has been carried while he had not mind enough to intend a change of residence. Where the object of inquiry is rather to ascertain the time at which the lunacy commenced, than the fact of lunacy, it is more material that the commission should be executed among persons who knew the state of the individual prior to the accident, to which by the witnesses on one side the lunacy is imputed (*s*).

The principle on which the Crown extends its protection to lunatics, requires an examination into the circumstances of competence or incompetence, under which the lunatic has performed acts affecting his property; and therefore it is usual in all such cases, when it appears that the lunacy has been of some duration, to inquire from what period it commenced (*t*).

There are instances of inquisitions having been quashed, on the ground that the commencement of the lunacy was not carried back so far as was warranted by the evidence. Thus, in one case where it appeared by a petition that the party who had been found lunatic by inquisition had been idiotic and of unsound mind from his infancy, and had done or acquiesced in several acts affecting his property, and the jury had carried back the lunacy only for the period of six years, no committees having been appointed, the inquisition was quashed, and a new one directed to issue; and it was ordered that the brother of the lunatic, and the petitioners for the commission, should lay before the Commissioners and jury such evidence as they might be able, touching the state of mind of the lunatic, from the earliest period of his life down to the time of executing the commission (*u*).

And in another case, where the lunatic had executed deeds

(*r*) *In re Jepson*, 2 Jur. 200.

(*t*) *Ibid*.

(*s*) *Ex parte Smith*, 1 Swanst. 6.

(*u*) *In re Wooller*, 8 Aug. 1825.

prior to the period at which the jury found the lunacy to have commenced, the inquisition was quashed, on the ground, that the finding of the jury was not carried back as far as was warranted by the evidence; and a new commission was directed to issue (*v*).

The Master in Lunacy, or Commissioners and jury have a right to inspect and examine the lunatic, and, it is believed, most commonly do so. Such Master, or the Commissioners have also power to order the lunatic to be produced before them, without the prior order of the Lord Chancellor; and if the persons, in whose custody the lunatic is, refuse to produce him, they are liable to the censure of the Court, and to the payment of costs (*w*). The disobeying the Chancellor's order for production of the supposed lunatic is a contempt punishable by commitment, which was formerly to the Fleet (*x*), but now to the Queen's Prison (*y*).

The personal examination of the party is for the purpose of assisting the jury in forming an opinion of the state of mind of the party, and they are at liberty to exercise their own observations, and make their own inference, from the result of their observation. The jury having the testimony of others before them, as well as the information derived from their own personal examination and inspection, are bound to draw their conclusion from the effect of both kinds of evidence combined, and it is not a valid objection to their finding that they paid less attention to the evidence adduced before them, than to the result of their own observations upon the examination of the party (*z*).

An order may be obtained for allowing access to be had to a person supposed to be a lunatic, for the purpose of enabling him and his friends to oppose the commission. Thus, in a case where a commission had been issued against a party who was in confinement, and access to him had been denied; on the petition of his daughter and her husband, stating that they

(*v*) *In re Warren*, 17 April, 1824.

(*w*) *Ex parte Southcot*, 2 Ves. sen. 404.

(*x*) *Lord Wenman's case*, 1 Peere Wms. 702.

(*y*) 5 & 6 Vict. c. 22, s. 1, *ante*, p. 18.

(*z*) *In re J. B.* 1 My. & Cr. 542, 543.

believed that they could produce competent witnesses to prove that the party supposed to be a lunatic was of sound mind, and able to manage his own affairs, and that they disapproved of the issuing of the commission, on the ground that the same was not necessary, and would be prejudicial to the alleged lunatic, his family, and affairs.—The Lord Chancellor ordered that the petitioners and their solicitors, and such medical advisers as they might think fit to appoint, should have access to and be at liberty to visit the party supposed to be a lunatic, at all seasonable times prior to and during the execution of the commission of lunacy, for the purpose of ascertaining the actual state of his mind, and his competency to manage his affairs; and the persons having him in custody were restrained by the order from interfering with or interrupting the petitioners, or their solicitors, or medical advisers, in such visits, and were further restrained from removing or concealing him from the petitioners, or their solicitors, or medical advisers (*a*).

In one case, where the wife of the supposed lunatic opposed the issuing of the commission, an order was made that she should be at liberty to attend the execution of the commission by counsel, if she thought fit (*b*).

A commission had been issued to inquire into the state of mind of an alleged lunatic who had made a will, by which he had given property to his wife, and she was therefore materially interested in the question of the alleged lunacy, with reference to the time whether before or after the date of the will, at which he might be found to have first become a lunatic. Lord *Cottenham*, C., gave liberty to the wife to attend the execution of the commission by counsel, but said he should not allow the wife the costs of attending it, if it should appear upon the return of the commission, that there was no good ground for the application (*c*).

There does not appear to be any case in which an application by a mortgagee of an alleged lunatic's estate, to be allowed to attend by counsel at the inquisition has been granted, when the object of the party applying was not to shew that the party is sane, but to fix a particular date to the commencement of the

(*a*) *In re Fletcher*, 25 April, 1832.

(*c*) *In re Parkinson*, 5 Jur. 547.

(*b*) *In re Clement*, 30 July, 1831.

lunacy, with a view to his own interest, and not to the interest of the lunatic (*d*). At any rate, such an application will not be granted, unless the petitioner will consent to be bound by the result of the inquiry (*e*).

On a petition presented by the presumptive heir of an alleged lunatic, suggesting that the latter had, after the commencement of his lunacy, made a will in favour of his wife, and on that ground praying leave to intervene in the proceedings. Lord *Lyndhurst*, C., thought there was no case in which a party had been allowed to intervene for an object which is not to benefit the lunatic, but the party himself who makes the application. If, upon inquiry, such case should be found, he should require satisfactory evidence that the petitioner is not acting in collusion with other parties. The petition was not mentioned again (*f*).

In another case, the Lord Chancellor ordered any person or persons in whose custody or power the supposed lunatic might be, to produce him at the execution of the commission of lunacy, or on any adjournment thereof, to be inspected and examined, as often as there might be occasion, before the commissioners and jury (*g*).

And sometimes a further order is added, that notice of the time and place of executing the commission be given to the supposed lunatic, or some other person on his behalf (*h*).

If the persons who have the *non compos* in their power carry him out of the Chancellor's jurisdiction, to avoid producing him, it has been said, that the commission may be executed in his absence (*i*). But, where the party had been secreted, and the jury required his production, it was one ground for superseding the commission and issuing a new one (*k*).

A commission may be directed against a *non compos* abroad, and the inquisition shall be taken, not where he last resided, but where his mansion house or other property is situated. On

(*d*) *Ex parte Snook, In re Watts*,
1 Phill. C. C. 512.

(*e*) *Ibid*.

(*f*) *In re Watts*, 1 Phill. C. C.
514.

(*g*) *In re Holmes*, 13 Dec. 1827.

(*h*) *In re Jervis*, 14 Aug. 1829;
In re Clement, 30 July, 1831. See
ante, p. 119.

(*i*) *Halse's case*, cited 2 Ves. sen.
403.

(*k*) *In re Halse*, 30 Nov. 1743.

a petition for a commission of lunacy against a person who was positively sworn to be a lunatic then resident in Flanders, Lord *Hardwicke* said, there can be no good reason, why, if any subject having an estate in England happens to be an idiot or lunatic, but is out of the kingdom, there can be no inquiry here. No inquiry can be made beyond sea, for it is not to be executed by the commissioners only, as in taking an answer or assigning a guardian, which may be executed beyond sea, but there must be a jury to inquire of the fact; which must be of a county in England; then, if no inquiry can be made in this country, both the person and his estate would be in a very unfortunate case, and also the King as to his prerogative. The whole matter must be inquired into before the commissioners and jury, so that no mischief may arise from the absence of the party. If they are satisfied by clear evidence that he is a lunatic, they will find so without inspection; if not satisfied without inspection, they will make no verdict, or return that he is not; and there it must rest, nor can any effect arise from it. Nor is this conclusive; for, if he is beyond sea, and is of sound mind himself, the laying hold of his lands is notice to him that such proceedings are against him, and he may come and appear, or any person opposing the commission on his behalf will be heard; and if insisted upon, and reasonable evidence adduced, he must be then inspected. A commission was accordingly issued into the county where the mansion house and great part of the alleged lunatic's estate lay (*l*).

The Chancellor, if possible, will prevent a *non compos* from being carried out of the jurisdiction of the Court, even before a commission has issued (*m*).

Where a party had been taken out of the jurisdiction of the Court, before the commission issued under which she was found to be of unsound mind, an order was made that she should be brought back to England. It was referred to the Master to appoint a proper person to inquire whether the lunatic could be removed without danger or injury to her health (*n*).

(*l*) *Ex parte Southcot*, 2 Ves. sen. 401; *S. C. Ambl.* 109.

(*m*) *Lady Marr's case*, *Ambl.* 82.

(*n*) *In re Wykeham*, 1 Turn. & Russ. 537.

Leave was given for a lunatic under particular circumstances to reside in Scotland, on his committee who resided in England, undertaking to bring the lunatic within the jurisdiction whenever it should be required. A petition by the committee of the lunatic, prayed that, under the circumstances stated in the petition, the lunatic might be permitted to reside in *Scotland*.

It appeared upon affidavit, that the lunatic who had for some time past been residing in *Scotland*, without the sanction of the Lord Chancellor, had originally gone thither with his mother, who died at *Edinburgh* in *November*, 1843; after which the lunatic having become violent and intractable, it had been thought advisable to place him in a lunatic establishment in *Glasgow*, where he had ever since remained: that, since he had been at *Glasgow*, his health and mental condition had visibly improved, and that he was much soothed by the frequent visits of his brothers and sisters, all of whom resided either at *Edinburgh* or *Glasgow*, while, in *England*, he had no relations nearer than uncles and aunts, with whom he had very little acquaintance; and that his committee, who was one of those uncles, and who resided in *England*, would be unable from the state of his own health, to be much with him. The Lord Chancellor, after observing that he was not aware of any precedent for such an order as was prayed, said that, under the peculiar circumstances of this case as disclosed by affidavit, he was disposed to make it, provided the committee would give security for bringing the lunatic within the jurisdiction when he should be required to do so. The committee being willing to comply with that condition, the order was made (*n*).

An order to restrain the removal of a supposed lunatic out of *England* was made upon the petition for a commission, the hearing of which was postponed (*o*).

But an order to prevent the removal of a supposed lunatic out of the Lord Chancellor's jurisdiction will not be made except upon affidavits which satisfy the Court that the party

(*n*) *In re Jones*, 1 Phill. C. C. 461. (*o*) *In re Frank*, 26 Feb. 1825.
See *In re Rawson*, 3rd July, 1839.

is a fit subject of a commission of lunacy, and that there is reasonable apprehension of such an intended removal.

The supposed lunatic himself has a right to be present at the execution of the commission (*q*).

It is said to be a practice by no means uncommon in cases of lunacy, (analogous to a practice very common in civil cases), when the lunatic cannot be removed to the jury, and it is inconvenient for the jury to go to the lunatic, for one or two of the jury to examine the lunatic, and report their observations to the rest (*r*). But such a practice ought not to be encouraged, except in cases of absolute necessity, as it deprives the party of the benefit of the judgment of the other jurors.

In one case, on issuing a commission, it was ordered, that if the commissioners and jury thought fit to examine the supposed lunatic, for the purpose of ascertaining the actual state of his mind, then they, or such of them as thought proper should visit him at his house (*s*).

In another case, where the fact of the lunacy of the party was not much disputed, directions were given, with the view of shortening the inquiry and saving expense, that the jury should examine the supposed lunatic previously to entering upon other evidence (*t*).

In one case, where the commission was executed in London, and the jury thought it necessary to have a view of the sup-

(*q*) *Ex parte Cranmer*, 12 Ves. 455; *ante*, p. 125.

A lunatic ought not to be brought before the Court of Commissioners under any artificial excitement. A case is mentioned of a supposed lunatic having been brought before the commissioners for a second examination, his conduct at the first having been rational: in the interval he had been permitted to drink a considerable quantity of ale, spirits, and bottled porter, immediately after which he was again

produced; when his altered demeanor convinced the jury (ignorant of his potations), that he was a lunatic; and a verdict was found accordingly. One of the commissioners being afterwards accidentally informed of the circumstance, laid the case before the Lord Chancellor, who immediately quashed the commission; 1 *Paris & Fonbl. Medical Jurispr.* p. 294, n. (*a*).

(*r*) *Ex parte Smith*, 1 *Swanst.* 6.

(*s*) *In re Clement*, 30 July, 1831.

(*t*) *In re Green*, 2 April, 1831.

posed lunatic's mansion-house in the country, it was ordered that one of the commissioners should be at liberty to attend such view by the jury (*u*).

In ordinary cases of the execution of inquests of office inasmuch as such proceedings are *ex parte* and not conclusive, notice is not given of the execution of the commission to the party who will be affected by it; but if a sufficient reason for such notice is made out on application to the Court, an order may be obtained that reasonable notice be given to the party requiring it (*v*).

The Masters in Lunacy recommend a notice in writing to be delivered and read to the alleged lunatic some days before the inquisition is held, stating the time, place, and object of the proposed inquiry (*w*).

If the person against whom a commission of lunacy is sought to be obtained, or any person interested in opposing such a proceeding, or their agents, have entered a *caveat* at the office of the Secretary of lunatics against the issuing of the commission, notice of the execution of the commission must be given to the party who has entered such *caveat*. Where a party against whom a commission had been prayed had presented a petition against the issuing of the commission, and stated that he was perfectly competent to govern himself and to manage

(*u*) *In re* Sir G. O. P. Turner, 13 Dec. 1823.

(*v*) *Rex v. Daly*, 1 Ves. sen. 269.

It seems extraordinary, that such a rule as this should still prevail in matters of lunacy, and that a commission should be granted without requiring any notice to be given either to the party to be affected by it, or to some of his relations who are not concerned in the application; and that it is practicable for a comparatively secret tribunal to sit in judgment upon the actions and state of mind of a party, without his having an opportunity of preparing for his own vindication, and defending himself against

the imputation of insanity. Notwithstanding the right to traverse, it is submitted, with great deference, that it would be proper to make a general order of Court, requiring reasonable notice in all cases to be given to the party, or to some of his relations or friends who are not concerned in the application, of the intention to apply for a commission of lunacy against him. Such notice, if the party possessed any reason, would enable him to oppose the application in the first instance, and would be no obstacle against the issuing of a commission in cases of absolute necessity.

(*w*) See *ante*, p. 119.

his affairs; it was ordered that due notice of the time and place of executing the commission should be given to his solicitors, who were to be at liberty to attend the execution of the commission by counsel, if they thought fit, and that they should be allowed their costs in case the party should be found a lunatic (*x*).

In a case, where a petition was presented by a party, stating that he had been informed, that a commission of lunacy had been issued against him on the application of his two daughters, and that he was in a sound state of mind, and perfectly competent to the management of himself and his affairs, which he was ready to prove by the evidence of persons of respectability, and stating some objections to the commissioners named in the commission on account of their connexion with the solicitor for the commission: the Lord Chancellor, on a number of affidavits being filed, ordered the commission to be resealed, and to be forthwith tried; and that due notice of the time and place of executing the commission should be given to the alleged lunatic or his solicitors (*y*).

Notice of the execution of a commission was ordered to be given to the nephew and heir-at-law of an alleged lunatic, on his presenting a petition in opposition to the commission (*z*).

Where notice of the execution of a commission had been directed to be given to a party who had an interest in respect of a contract with the supposed lunatic, the Court, on the petition of such party to quash the commission, or for liberty to traverse the inquisition, on the ground that the commission had not been executed at the residence of the lunatic, and that the order as to notice had not been complied with, after much hesitation, refused to quash the inquisition, but granted leave to the petitioner to traverse (*a*).

The commissioners, or Masters in Lunacy, under commissions of lunacy, have power to summon witnesses and issue subpœnas, as incident to their office; and if the witnesses refuse to attend, it seems that the Chancellor will make an

(*x*) *In re Sir G. O. P. Turner*, 1826.

8 Dec. 1823.

(*z*) *In re Bushnell*, 9 May, 1821.

(*y*) *In re Braithwaite*, 21 June,

(*a*) *Ex parte Hall*, 7 Ves. 261.

order for their attendance in the same manner as in cases of bankruptcy (*b*).

The commissioners are bound, under a penalty of 40*l.*, to suffer witnesses to give evidence openly in their presence (*c*).

An inquisition may be set aside, on the ground of the sheriff's refusal to hear evidence (*d*).

It seems that the costs incurred in opposing a commission of lunacy under the sanction of the Court, will be ordered to be paid out of the lunatic's estate. In a case, where a solicitor had been employed by a party as his attorney, some time prior to the application for the commission of lunacy, and had been instructed to oppose it; and acting on the evidence of two medical men of considerable eminence and practice, under whose care the party supposed to be a lunatic had been for some time, who deposed that the person in question, though of singular and eccentric habits and conversation, was of sound mind, had entered a *caveat* against the issuing of the commission, which was afterwards granted, with a direction that due notice of the time and place of executing it should be given to the supposed lunatic and his next of kin, who were to be at liberty to attend the execution thereof by their solicitors, or counsel; the consideration of the costs of such appearance was reserved. The solicitor attended the inquiry, which lasted three days, before the commissioners and jury, and employed two counsel for opposing the commission, and the jury found the party to be of unsound mind, and the Master approved of committees, but his report had not been confirmed. The solicitor presented a petition for obtaining an order for the taxation and payment of the costs which had been incurred in the matter; which application was opposed by the committees. The Lord Chancellor referred it to the Master to tax the costs incurred by the petitioner prior to the issuing of the commission, and about its execution, and for instructing and employing counsel; but the consideration of such costs, and of the application for them, was reserved (*e*).

(*b*) *Ex parte Lund*, 6 Ves. 784;
ante, p. 119.

(*c*) 1 Hen. 8, c. 8.

(*d*) 1 Ves. sen. 270.

(*e*) *In re Knight*, 20 March, 1832.

In this case the allowance for the maintenance of the lunatic had not

And in another case, where a solicitor had been appointed to conduct the defence of a person against whom a commission of lunacy was issued, and had expended considerable sums of money for that purpose, and the Master on a reference had taxed the costs; on a petition being presented by the solicitor for payment of such costs out of the lunatic's estate, or by sale or mortgage of a competent part of his real estates, or that a sufficient sum for the purpose might be directed to be set apart out of the annual rents of his estates.—The Lord Chancellor referred it to the Master to inquire and certify, whether there were any and what funds or property belonging to the lunatic, out of which the costs could be raised and paid; with liberty for the Master to state special circumstances, and to examine any of the parties on interrogatories (*f*).

In Lord *Portsmouth's* case, on the order for reference as to maintenance of the lunatic, it was also referred to the Master to tax and settle the reasonable costs which had been incurred by the committee of his estate, and by the Countess of *Portsmouth*, who opposed the commission (*g*).

After it has been ascertained that the lunatic has funds applicable to the payment of costs, which have been taxed and allowed, an order may be obtained, on petition, for payment of them.

It seems, that if parties vexatiously oppose an application for a commission, which is absolutely necessary for the protection of the lunatic, the Court will compel them to pay the costs incurred by such opposition (*h*). The costs incurred by a solicitor in opposing a commission, where the party is found to be of *sound mind*, must be paid by the person who employs him, unless the Lord Chancellor orders the person who prosecuted the commission to pay the costs of an improper application for one. Even if the Lord Chancellor will not award costs in such a case, yet an action may be maintained for taking out a commission of lunacy maliciously, and without sufficient

been settled; which is usually done before any order for payment of costs can be obtained.

(*f*) *In re Frank*, 26 March, 1831; see *In re Norris*, 26th May, 1837;

In re Taylor, 3rd and 16th Nov. 1841.

(*g*) *In re The Earl of Portsmouth*, 3 June, 1823.

(*h*) *In re Smith*, 1 Russ. 348, 8 March, 1826.

cause; and the costs incurred by the party in resisting it can be taken into consideration by the jury in assessing damages (*i*).

When the jury is ready to return their verdict, and offer to do so, the commissioners must receive it, or they will incur a penalty of 100*l.* (*k*).

The inquisition, by statute 36 Ed. 3, c. 13, is required to be made by indenture; and an inquisition not indented was held void. (*l*).

The inquisition must be under the seals of twelve jurymen, otherwise the officer by whom it is taken will be liable to a penalty of 100*l.* (*m*).

If the jury agree upon their verdict, and deliver it in writing to the Commissioners, it will be void, unless indented and sealed (*n*).

The Commissioners are to deliver to the jury, and the jury is to receive, a counter-panel of the inquisition by them presented, indented and sealed, which the jurymen first sworn is required to keep, lest the Commissioners should alter or embezzle the inquisition; in default of so doing, the Commissioners are to forfeit 100*l.* and each jurymen 20*s.* (*o*).

The Commissioners for taking any inquest upon pain of the forfeiture of 20*l.*, shall return the inquests taken before them into the Court of Chancery or Exchequer, within one month next after the taking of the same (*p*).

In considering how far these provisions are applicable to the Masters in Lunacy, reference must be made to the statute 5 & 6 Vict. c. 84, ss. 1, 5, 7, and the orders made under it.

In a case, where there are no next of kin of the alleged lunatic, it is not necessary to serve the Attorney-General on behalf of the Crown before the inquisition is returned (*q*).

In a case, where the commission had not been returned for two years and more after it had been executed, and the solicitor

(*i*) See *post*, Chap. ix. s. 1.

(*k*) 1 Hen. 8, c. 8.

(*l*) *Barantine's case*, Dy. 170, a.

(*m*) 1 Hen. 8, c. 8.

(*n*) *Lord Powis's case*, Dy. 170, a.

(*o*) 1 Hen. 8, c. 8.

(*p*) 8 Hen. 6, c. 16; see also 18 Hen. 6, cc. 6, 7; 23 Hen. 6, c. 16; 1 Hen. 8, c. 8; 1 Coll. on Lun. 140.

(*q*) *In re Early*, 1 Jur. 524; see *Ex parte Watson*, Jac. R. 161.

who prosecuted it refused on application to give any information respecting it and a petition was presented that the inquisition might be returned, which was afterwards done; the solicitor was ordered to pay the costs of the petition (*r*).

A person's keeping a commission of lunacy by him for several years, without ever putting it into execution, is a contempt of Court; and such commission, as well as a petition under it, was discharged with costs, on account of its dangerous tendency, and the improper use which in many respects might be made of it, particularly to terrify and distress the person against whom it issued (*s*).

The clerk of the Petty Bag Office of the Court of Chancery, or his deputy or other officer having authority to receive any office or inquisition, which ought to be returned into Chancery, must receive the same and put it on the files, to remain of record, within three days after it has been received or offered to him, or in default forfeit 40*l*. And if such clerk, or his deputy, or other officer, refuse to receive such office or inquisition when offered, the Commissioners are relieved from the penalty to which they would otherwise be liable for not returning such office or inquisition, provided it be returned within a month. The clerk of the Petty Bag of the Court of Chancery must certify the transcript of every office or inquisition taken before any Commissioners, to the Court of Exchequer, the next Term after the receipt thereof, upon pain of forfeiture for every default of 5*l*. (*t*).

An inquest of office ought not to be received on the oath of the party, but brought in with the commission under the Great Seal (*u*).

On the accidental loss of a commission of lunacy, upon which an inquisition had been taken, and signed by the jury and three Commissioners, an order was made for the Clerk of the custodies to make out a duplicate of such commission, bearing the same teste, and directed to the same Commissioners; and for the three acting Commissioners under the

(*r*) *In re Matthew*, 18 Nov. 1828.

(*s*) *Anon*, 2 Atk. 52.

(*t*) 1 Hen. 8, c. 8.

(*u*) *Moile v. Earl of Warwick*,

1 Lev. 65.

former commission to annex to such duplicate, when sealed, the inquisition which had been taken, and to return the same forthwith (*v*).

In the inquisition signed and returned by the Commissioners of lunacy, the date was by accident omitted. It was stated to be the practice, after the jury have found a party a lunatic, to prepare duplicate returns of the inquisition, and, for the Commissioners sitting on the inquiry, to sign one duplicate which is forwarded to the Petty Bag Office, and the jury to sign the other duplicate, which is retained by the solicitor, who has the carriage of the commission of lunacy.

On a motion that the date might be ordered to be inserted in the return of the inquisition, signed by the Commissioners, or that the inquisition might be returned to the Commissioners for that purpose; his Lordship said, he had no jurisdiction to make such an order, and the jurisdiction of the Commissioners had expired; but if the petitioner chose, he might take an order for the filing of the duplicate return signed by the jury, which was ordered (*w*).

SECTION V.

Of the Inquisition under the Commission of Lunacy.

THE commission and the verdict must be consistent upon the face of the record, which cannot be, unless the verdict is either in the words of the commission, or in words to the same effect. But, in inquiries under commissions, the jury have not been strictly limited to the question whether lunatic or not; but if they find that the party is of unsound mind, it has been held a sufficient finding. The Lord Chancellor has no authority to act upon the liberty and property of the subject, except upon a verdict expressed in legal terms; and if the jury should return a special verdict, stating, that they

(*v*) *Ex parte Raine*, 19 Ves. 589.

(*w*) *In re Lungham*, 1 Jur. 375.

could not say whether the party was lunatic or not, and the evidence, the Court cannot on such a verdict determine the fact of insanity (*a*).

Where a special return to a commission of lunacy was made and filed, the commission was quashed, and another commission issued; if the return had not been filed it would have been a void return (*b*).

The proper return to a commission of idiocy or lunacy, where the party is not found an idiot or a lunatic, but is considered by the jury as an object fit to be under the superintendence of the Court of Chancery, is that the party is of *unsound mind*, so that he is not sufficient for the government of himself, his lands, and tenements: and therefore, where the return was, "that the party was so far debilitated in his mind, as to be incapable of the general management of his affairs; and had been in the same state of mind for six months last past," the inquisition was quashed, and a new commission issued (*c*).

It is settled, that if the jury find merely the incapacity of the party to manage his affairs, but do not infer from that and other circumstances unsoundness of mind, though the party may live where he is exposed to ruin every instant, yet upon that finding the commission cannot go on (*d*).

A return, finding "that a party was, from great weakness of mind, incapable of governing himself and his lands," was held to be illegal and void (*e*).

Inquisitions have been quashed, with returns finding persons in the following condition, namely—"Not sufficient to manage his person and estate" (*f*); "not of sufficient understanding to manage her own affairs" (*g*); "not a lunatic, but incapable" (*h*); "not a lunatic, yet not proper to take care of his affairs during

(*a*) *Ex parte Cranmer*, 12 Ves. 449.

(*b*) *Ex parte Freak*, Sel. C. C. 47.

(*c*) *Ex parte Cranmer*, 12 Ves. 445.

(*d*) *Sherwood v. Sanderson*, 19 Ves. 286.

(*e*) *Ex parte Barnsley*, 3 Atk. 168.

(*f*) *Ex parte Read*, 1 Atk. 160; 2 Inst. 405.

(*g*) *Ex parte Harvey*, 3 Atk. 169.

(*h*) *Ex parte Ashton*, 3 Atk. 169.

his fits" (*k*); "worn out with age, and incapable of managing her own affairs" (*l*); "had been a lunatic, but that, at that time, he enjoyed a lucid interval, and that he was not at present capable of the management of his own affairs, and that he had been in the same state from the 9th of February last" (*m*).

An inquisition in lunacy having found that a person was a lunatic, and did not enjoy lucid intervals, and that she had been in the same state of lunacy from the time of her birth, was quashed as being contradictory in terms, and a new commission was ordered to issue (*n*).

An inquisition finding the party capable of managing himself, but not of managing his affairs, was quashed, and a new commission was issued without presenting a new petition (*o*).

An inquisition may be supported, finding a person of unsound mind, although neither an idiot nor a lunatic. An inquisition finding a party "not a lunatic, but of *unsound mind*, so as not to be sufficient for the government of herself, her lands, &c., was considered good (*p*). For, "of unsound mind" are legal and technical words, indeed they are the proper terms of a plea; it would be improper in pleading to describe a man *lunaticus* instead of *non sanæ mentis* (*q*).

A return, finding a party "*insanæ mentis, et sic deprivatus rationis et intellectus, ita quod regimini sui et ipsius status sui omnino incapax existit*," was held good (*r*).

Where a party was found "an idiot, not having lucid intervals for the space of eight years last past," Lord Chancellor *Nottingham* held this repugnant; but it was decided good at

(*k*) *Ex parte Halse*, 2 Ves. sen. 405. It appears, that the lunatic in this case was an infant, and had been secreted from the jury, who returned the following verdict "not a lunatic, but we judge him a person not proper to be trusted with the management of his affairs during the continuance of his epileptic fits." *In re Halse*, 30 Nov. 1743; see 3 Atk. 173.

(*l*) *Wall's case*, 3 Atk. 173

(*m*) *In re Cox*, 5 Nov. 1829.

(*n*) *In re Bruges*, 1 My. & Cr. 278; see Co. Litt. 246, b. 247, a.; 1 Bl. Com. 304.

(*o*) *In re Bennett*, 1 Jur. 469.

(*p*) *Sherwood v. Sanderson*, 19 Ves. 280; S. C. Coop. C. C. 108.

(*q*) *Dennis v. Dennis*, 2 Saund. 352; see 3 Atk. 173.

(*r*) *Ex parte Pauncefort*, 3 Atk. 170.

law, on the ground that idiocy implied an infirmity *a nativitate*, and consequently the eight years were surplusage (*s*).

Where a jury returned "that the party, at the time of taking the inquisition, is a lunatic enjoying lucid intervals, and during such lucid intervals is competent to the government of himself and the administration of his own affairs;" and a petition was presented, praying a reference to approve of a committee, or such other order as the Court might think fit—Lord *Eldon*, C., said, that he could not make a grant of the committeehip upon that finding, and directed a search to be made as to the course of proceedings in similar cases. After several precedents of inquisitions had been produced from the office of the Secretary of lunatics, the Lord Chancellor thought nothing could be done but to issue a new commission. There was no instance of a *melius inquirendum* in such a case. It was then objected, on the part of the supposed lunatic, that a commission was unnecessary, the evidence shewing that he was in such a state of mind as to be competent to the management of himself. His Lordship said, that a short petition might be presented against the issuing of the commission; which, having been done, and affidavits filed on both sides, his Lordship thought it a proper case for a commission, and a new one was issued (*t*).

It is a rule of law, where a jury state their premises, and draw a conclusion, which does not of necessity follow from the premises, that the conclusion is not to be taken by itself. Thus, where, under a commission of lunacy, the jury found "that the party is not a lunatic, but that partly from paralysis, and partly from old age, his memory is so much impaired, as to render him incompetent to the management of his affairs, and consequently of unsound mind, and that he had been so for the term of two years last past:" the inquisition was quashed, and a new commission was ordered to issue (*u*). Under the second commission, the jury found the party to be of unsound mind.

(*s*) *Prodgers v. Frazier*, 3 Mod. 43; 1 Vern. 16; Skinn. 133; *ante*, p. 2.

(*t*) *Ex parte Atkinson*, Jacob, Rep. 333.

(*u*) *In re Holmes*, 4 Russ. 182.

In a case where a female was found a lunatic under an inquisition by the Christian name of *Jane Eliza*, and there afterwards appeared strong reason to believe that her true Christian name was *Elizabeth Jane*, but there were no means of ascertaining the fact, as the register of her baptism could not be found. The Lord Chancellor directed, there being no doubt as to the identity of the person, that an order for the transfer of stock held by trustees for the lunatic, under the name of Elizabeth Jane C., and the orders in all future proceedings should be entitled “in the matter of Elizabeth Jane C., in the commission called Jane Eliza C.” (v).

An inquisition may be good, notwithstanding the omission to state whether the party has or has not lucid intervals. Thus, a return finding a party a lunatic and of unsound mind for the space of six years and upwards, was objected to as irregular, in not finding whether the lunatic had or had not lucid intervals. It was in evidence that the commissioners neglected to state that circumstance to the jury; that the foreman took no notice of it; that it was not omitted through accident; for, in a conversation about settling the inquisition, some discourse arose as to its insertion, when one of the commissioners said it was better not to insert it; and it was accordingly omitted in the presence of the greater part of the jurors, if not of all. Lord *Rosslyn* observed, if the usual course is to find expressly, whether the person does or does not enjoy lucid intervals, this inquisition is not returned in the usual form; for he could not take the fact of lucid intervals to be found either way. He considered, however, the inquisition as not having in express terms, but by implication, negatived lucid intervals; and directed an inquiry, whether there had been an uniform course. After an interval of a few days, his Lordship said, that he had caused search to be made; and that, in *Ex parte Barnsley* (w), no objection was taken upon that ground; and that the return was certainly according to the usual course, as very few of the numerous references in that case stated whether

(v) *In re Crawford*, 1 My. & Cr. 240.

(w) 3 Atk. 168, 184.

the party had lucid intervals; and all that could be done was to allow a traverse (*x*).

Where there is any misbehaviour of the commissioners or jury, in the execution of a commission, it must be examined into; and if the Court see cause, they may quash the inquisition, and direct a new commission to issue (*y*).

When an irregular return is made, and there is sufficient evidence in the case to satisfy the Lord Chancellor that the party is the proper subject for a commission, a new one will be directed to issue.

In one case, three commissions were applied for against a party before he was found *non compos* (*z*).

Lord *Hardwicke*, C., on quashing an inquisition as repugnant, ordered a new one to issue (*a*). Lord *Erskine*, after quashing an inquisition for uncertainty, was strongly inclined to direct a *melius inquirendum*; but finding, upon inquiry, that it had never been directed in lunacy, he issued another commission (*b*). And the same course was pursued by Lord *Eldon* (*c*), and afterwards by Lord *Lyndhurst* (*d*). An order was made for a new commission on quashing the return on a previous commission without presenting a second petition to the Court (*e*).

In one case, where an inquisition found a person of sound mind, who appeared to be in a state of imbecility, Lord *Eldon* directed two physicians to visit the party, for the purpose of determining whether the state of her mind was competent to the management of her affairs; and instead of issuing a second commission, an order was made to restrain the party from executing any deed or will disposing of funds in Court, except in the manner directed by the order (*f*).

(*x*) *Ex parte Ferne*, 5 Ves. 450.

(*y*) *Ex parte Roberts*, 3 Atk. 6; 333.

1 Ridg. P. C. 541.

(*z*) Lord *Wenman's* case, cited in 2 Ves. sen. 408.

(*a*) *Halse's* case, 2 Ves. sen. 405.

(*b*) *Ex parte Cranmer*, 12 Ves. 454; see *Ex parte Roberts*, 3 Atk. 5.

(*c*) *Ex parte Atkinson*, Jac. Rep.

(*d*) *In re Holmes*, 4 Russ. 182.

(*e*) *In re Bennett*, 1 Jur. 469.

(*f*) *Ridgway v. Darwin*, 8 Ves. 65; see *post*, Chap. v. sect. vii. div. 2.

SECTION VI.

Of Traversing the Inquisition of Lunacy.

By the common law, when the King became seised of any estate of freehold or inheritance, by matter of record, whether judicial or ministerial, or by matter of fact found by office, the party aggrieved could have no traverse of the inquest; but he was put to his petition of right, in the nature of a real action, to recover his right; in some cases, including chattels real as well as higher interests, there was another remedy called a *monstrans de droit*; and that was where office was found for the King, and by the same office the title of the party was also found. As, if a disseisor aliened in mortmain, and the special matter was found by office, namely, the disseisin and alienation, the disseisee had his *monstrans de droit*; but if the office omitted the title of the party, he was put to his petition of right (a). But a traverse was allowed only in those cases, where, by the inquest of office, land was not in the King's hands; but the King was only entitled to a *scire facias* in the nature of that action, to which a subject would have been entitled under similar circumstances. In such cases, the party, being in the nature of a defendant, might appear and traverse the office, without shewing any title in himself (b). So, at common law, if the King, by false office, was possessed of the custody or interest in any land, by reason of *idiocy*, or the like, the party aggrieved could not have a traverse, but was put to his petition (c). The remedy by petition having been found inconvenient, the statute 34 Edw. 3, c. 14, provided, that, in certain cases, after the return of the office into Chancery, the party aggrieved might traverse the office in Chancery, and the process was directed to be sent into the King's Bench, to be tried according to law. And by statute 36 Edw. 3, c. 13, the right of traversing was extended to all kinds of offices taken before

(a) 4 Rep. 54; Gilb. Exch. 172.

(c) 4 Rep. 56, a.

(b) 4 Rep. 54.

escheators; and other provisions, not material to be here stated, were afterwards made respecting traverses (*d*).

By the statute of the 2nd & 3rd of Edw. 6, c. 8, s. 6 (*e*), it is provided, that if any person shall be untruly found lunatic or idiot, every person and persons aggrieved by such office or inquisition shall and may have his or their traverse to the same, immediately or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices found. This statute is considered as not confined to particular inquisitions only, but to apply to all inquisitions (*f*). The Irish statute, 15 Car. 1, c. 4, s. 3, contains a similar provision as to Ireland. By stat. 6 Geo. 4, c. 53, s. 1, (which extends to Ireland), it is enacted, that, where any person shall be desirous of traversing any inquisition of lunacy, a petition for that purpose shall be presented to the Lord Chancellor, or other person entrusted by the King's sign manual with the care of lunatics, within three calendar months from the return of such inquisition, who is required to hear and determine such petition; and the person so intrusted shall, in every order to be made upon any such petition, limit a time, not exceeding six calendar months from the date of such order, within which the persons desiring to traverse, and all other proper parties, are to proceed to trial of such traverse, and the person so intrusted as aforesaid, upon every such traverse, may order the persons traversing, not being the party who has upon such inquisition been found idiot or lunatic, or of unsound mind, within three weeks after such order, to give sufficient security, to one of the Masters in Chancery, and to his satisfaction, for all proper parties proceeding to the trial of such traverse within the time to be for that purpose limited.

Every person who shall have right to traverse any such inquisition, who shall not present his petition within the limited time, or who shall neglect or refuse to give such security, or who shall not proceed to the trial of such traverse within the

(*d*) 8 Hen. 6, c. 16; 18 Hen. 6, 322; *In re Sadler*, 1 Madd. 581.
c. 6; 1 Hen. 8, c. 10; see *ante*,
pp. 88—90, Com. Dig. Prerog. (D.)

(*e*) See 2 Inst. 688.

(*f*) Co. Litt. 77, b.; 12 East, 115.

83, 84; *Ex parte Gwydir*, 4 Madd.

time limited, and the heirs, executors, and administrators of every such person, and all others claiming under him, shall be absolutely barred of such right of traverse, unless the person intrusted as aforesaid shall, under the special circumstances of any particular case, think fit, upon petition, to allow such traverse to be had or tried after the time limited; in all which special cases the person so intrusted may make such orders as to him shall seem just (*g*).

The person intrusted as aforesaid, if he shall be dissatisfied with any verdict to be returned upon any such traverse, may order one or more new trial or trials thereon, as to him shall seem meet, and as is usual in cases of issues directed by the Court of Chancery (*h*).

When the person who has been found a lunatic, or his friends, or any other party having an interest in disputing the inquisition, are dissatisfied with the finding of the jury, and are desirous of traversing it, application must be made to the Lord Chancellor, or other person intrusted as aforesaid, by petition, praying for leave to traverse; and if, upon hearing this petition, liberty to traverse be granted, such directions as to the time of filing the traverse, and proceeding to trial, and other matters, will be given as the circumstances of the case require.

An office copy of the Lord Chancellor's order to allow a traverse must be left at the Petty Bag Office, where the traverse is drawn up and filed; an office copy of it must be taken by the prosecutor of the commission, who replies in the name of the Attorney-General on behalf of the Crown. The traverse is usually prepared by the petitioner's solicitor, and is signed by counsel when filed; no rule (as in other cases) is given for the Attorney-General to reply; but he replies of course, and proceeds to issue.

The subsequent proceedings on traverses of inquisitions of lunacy are in the Petty Bag Office, and the record is carried from thence into the Queen's Bench, in which Court alone it can be tried. A traverse is a summary proceeding, setting out

(*g*) 6 Geo. 4, c. 53, s. 2.

(*h*) *Ib.* s. 3.

the inquisition, and traversing or denying the facts thereby found, whereupon issue is joined for the Crown by the Attorney-General; and a *venire facias juratores* will be awarded, returnable into the Court of Queen's Bench (*i*). The issue will be badly joined, if the plea to the inquisition takes up a fact not stated in it (*k*).

If, by inquisition, a person be found a lunatic, and the custody is granted to a committee, and the party found lunatic bring a *scire facias* to set aside the inquisition, his committee cannot plead, nor join issue in such *scire facias*; for the latter has no interest in the estate of the lunatic, being in the nature of a bailiff to the King; and therefore, his duty is to inform the King's Attorney-General, who is the proper person to contest the matter on behalf of the Crown (*l*).

A traverse may be ordered to be tried by a special jury, at the next assizes to be held for the county where the party's residence is (*m*). The traverse of an inquisition of lunacy was directed, by Lord *Manners*, C., to be tried in the county where the party had principally resided and done acts affecting the rights of third parties, in preference to the county in which the commission of lunacy was executed (*n*). And such trial may be postponed in consequence of the absence of material witnesses, and want of sufficient time to prepare for trial (*o*). And the solicitor for the lunatic may be ordered, on the petition of the committee of his estate, immediately to carry into the Petty Bag Office of the Court of Chancery the traverse which has been directed to issue (*p*).

The statutes of 18 Hen. 6, and 1 Hen. 8, require the party tendering a traverse to give sufficient security for pursuing it with effect, and answering the intermediate profits of the lands. And it has been said, that, if a man traverses an inquisition, the usual course of the Court is to take security for the value of

(*i*) 4 Inst. 80; 1 Eq. Cas. Abr. 128; *Jefferson v. Morton*, 2 Saund. 6, 23; Latch, 3; *Ex parte Wragg*, 5 Ves. 452; Trem. P. C. 652; and see Appendix.

(*k*) *Ex parte Ferne*, 5 Ves. 832.

(*l*) *Thorn v. Coward*, 2 Sid. 124.

(*m*) *Ex parte Ferne*, 5 Ves. 832; *In re Sir G. O. P. Turner*, 18th Feb. and 1st March, 1826

(*n*) *In re Nugent*, 2 Molloy, 517.

(*o*) *In re Sir G. O. P. Turner*, 6 June, 1826.

(*p*) S. C. 24 Feb. 1826.

two years' profits of land, because in that time it is considered that the matter will be determined (*q*). But it does not appear that such rule is applicable to traverses of inquisitions of lunacy.

By the statute of 6 Geo. 4, c. 53, s. 1, the Lord Chancellor may order the persons traversing, not being the party found lunatic, within three weeks after the order for traversing, to give security to one of the Masters in Chancery for all proper parties proceeding to the trial of such traverse within the time limited.

A person traversing an inquisition is considered in the nature of a defendant opposing the title found for the Crown, and not in the nature of a plaintiff, as he would be in a petition of right to recover any thing from the Crown (*r*).

Thus, in a case where a party traversed an inquisition finding him a lunatic, the Attorney-General filed the common replication; and the proceedings having been sent from the Petty Bag Office to the Court of King's Bench, the prosecutor of the commission made up the record, and carried it down to trial; upon which it was objected, that the supposed lunatic was considered as a plaintiff, and his traverse in the nature of a *monstrans de droit*; and therefore, that he had the right to carry down the record. To which it was answered, and resolved by the Court, that he was properly treated as a defendant opposing the title found for the Crown, without setting up any title in himself, as he might do in a petition of right; and that it would be absurd to construe the liberty of traversing to give a power of delaying the Crown, which must be the case if the party was considered as having the common right of a plaintiff. It was therefore held, that the record was well made up, and carried down by the prosecutor of the commission (*s*).

It seems to have been held formerly, that the Court had a discretion in granting or denying a traverse, according as there

(*q*) *Rex v. Barlow*, Bunb. 25;
5 Vin. Abr. Suppl. 317.

(*s*) *Rex v. Roberts*, 2 Str. 1208;
11 St. Tr. 154, Lord Somers's ar-

(*r*) *Regina v. Mason*, 2 Salk. 447. argument in the banker's case.

appeared just cause or not for such a proceeding (*t*). Lord *Thurlow*, C., declared, that he had such discretion, and that the statute 2 Edw. 6, c. 8, was meant only to remedy a very harsh prerogative, and that, where application was made to the Court for leave to traverse, it must take great care that the general object of the proceedings under a commission should not be defeated (*u*). It has been laid down in several subsequent cases (*v*), that a traverse to the return of an inquisition finding a person *non compos* is a right by law, though the Lord Chancellor is not dissatisfied with the return upon the evidence. And Lord *Eldon*, C., seems to have considered it as a general principle, not to discourage applications for a traverse (*w*). The practice has always been for the party to petition the Chancellor for leave to traverse; and, by the 6 Geo. 4, c. 53, such petition must be presented within three months after the return of the inquisition.

The law upon the right to traverse still depends upon the early statutes which originally gave that right, and although Lord *Hardwicke* and Lord *Thurlow*, held it is discretionary in the Chancellor; yet, according to later decisions, leave to traverse an inquisition of lunacy, if applied for by the party himself, who has been found a lunatic, and when he is perfectly competent to exercise an act of volition upon that subject, is matter of right (*x*).

Lord *Cottenham*, C., said, "he had often heard Lord *Eldon* express an opinion that a traverse was matter of right, though it is difficult to reconcile that opinion with the previous authorities, and the practice which has prevailed from the earliest times of coming, in form at least, to ask for leave. If leave is given, it is the leave of the Chancellor; and then if

(*t*) Sir *John Cutt's* case, Ley. 26; see 3 Atk. 6.

(*u*) *In re Fust*, 1 Cox, 418.

(*v*) *Ex parte Ferne*, 5 Ves. 450; *Ex parte Wragg*, 5 Ves. 832; *Ex parte Ward*, 6 Ves. 579; *Ex parte Cranmer*, 12 Ves. 449; *Sherwood v. Sanderson*, 19 Ves. 287; and see

2 *Wilson & Shaw*, 515, 520.

See a traverse to an inquisition under a commission of escheat, in *Ex parte Webster*, 6 Ves. 109; and *In re Sadler*, 1 Madd. 581.

(*w*) 6 Ves. 580.

(*x*) *In re Bridge*, 1 Cr. & Ph. 338.

the traverse turn out unsuccessful, it would be difficult to make the party applying, pay the costs of the traverse personally; they would come out of the estate; but if he traverses as matter of right, he would do it at his own risk as to costs" (y).

Leave to traverse an inquisition of lunacy, if applied for by the party himself, who has been found a lunatic, is matter of right. There has been some conflict in the authorities upon this subject—Lord *Hardwicke* and Lord *Thurlow*, stating distinctly, that, in their opinion, it is discretionary in the Chancellor, whilst Lord *Rosslyn* and Lord *Eldon*, held an equally decided opinion the other way. In the case of *ex parte Roberts* (z), and in *Barnsley's* case (a), Lord *Hardwicke*, states his opinion that it is discretionary. In the matter of *Fust* (b), Lord *Thurlow* expressed a similar opinion, founding his opinion on the cases which had been decided by Lord *Hardwicke*.

In *Ferne's* case (c), Lord *Rosslyn* says, it is of right. And in *Ward's* case (d), the application being on behalf of a stranger, Lord *Eldon* refused it; but he stated, that if it had been on behalf of the person found a lunatic, it would have been a matter of right, that is, he would not have been at liberty to refuse it; and he expressed the same opinion in *Sherwood's* case (e), where he again says, that the traverse is matter of right. Lord *Cottenham*, C., said, "now, if I had not a strong disposition in favor of the right—it being, I conceive, essential to the protection of every individual that he should have the power, by a proceeding of his own, to challenge the decision of a jury summoned adversely against him, which takes from him his personal liberty and the enjoyment of his property—I think I am bound, on a question of so much doubt, to adhere to the last decisions, where I find they stand on the authority of two such men as Lord *Rosslyn* and Lord *Eldon*, who had the former decisions under their consideration, and must be supposed to have had regard, in forming their opinion, to

(y) *In re Bridge*, 1 Cr. & Ph. 342.

(z) 3 Atk. 5. 308.

(a) *Ib.* 184.

(b) 1 Cox, 418.

(c) 5 Ves. 832.

(d) 6 Ves. 579.

(e) 19 Ves. 280.

the contrary opinion which had been entertained by the two preceding Chancellors" (*f*).

An idiot may traverse the inquisition, but must appear in person at the trial to be inspected (*g*); for idiocy, it is said, may be discerned (*h*).

A woman having been found an idiot by inquisition, prayed by herself and counsel, that she might have leave to traverse the inquisition; and, after her examination, an order was made accordingly, upon condition that she would appear in person at the trial at the next assizes, or whenever it was brought on (*i*).

An idiot is never permitted to traverse by attorney. Thus, where application was made on behalf of an idiot to traverse by attorney, Lord *Hardwicke* desired precedents of such a liberty to be produced; but as no precedent could be found of an idiot having traversed by attorney, although several where lunatics had, his Lordship directed the idiot to appear in person, and, having done so, leave was given to traverse (*k*).

A lunatic, or person of unsound mind, may traverse the inquisition, either in person, or, with the Lord Chancellor's permission, by attorney (*l*); he may, however, be required to appear in Court in person, for the purpose of being examined (*m*).

The private examination for the purpose of the traverse is merely to satisfy the Lord Chancellor, that the party is competent to exercise an act of volition, and that it is his wish to exercise the right of traversing (*n*). Where the party found to be a lunatic had appeared before the Lord Chancellor, and claimed by petition the right to traverse, an order was made that he should be at liberty to do so (*o*). And where the lunatic was confined in prison for debt, and a petition to traverse the inquisition had been presented, the Lord Chancellor ordered an *habeas corpus*,

(*f*) *In re Bridge*, 1 Cr. & Ph. 338; see pp. 346, 347.

(*g*) *Ex parte Roberts*, 3 Atk. 7.

(*h*) *Skinner*, 5.

(*i*) *Anon.* Mos. Ch. Rep. 71.

(*k*) *Smithie's case*, cited 3 Atk. 7.

(*l*) 3 Atk. 7.

(*m*) Ambl. 112.

(*n*) *Sherwood v. Sanderson*, 19 Ves. 283; *Ex parte Ferne*, 5 Ves. 832. *In re Bridge*, 1 Cr. & Ph. 348.

(*o*) *In re Sir G. O. P. Turner*, 24 Feb. 1824.

returnable immediately, to issue to the Marshal of the King's Bench, to bring the lunatic before the Chancellor at the sitting of the Court two days afterwards (*p*).

Where a party had been found a lunatic under two inquisitions, the Court refused to allow him to traverse the second; such inquisitions, not being conclusive, may be again questioned in actions at law or by suits in equity (*q*).

The heir of a *non compos* cannot traverse the inquisition after his death, for the party on every traverse may be required to appear in person. Lord *Hardwicke*, C., observed, "a trial by inspection is the proper trial by the Lord Chancellor as to the person, when there has been a solemn trial in the lifetime of the lunatic, who is bound himself, to say, that after his death, when he cannot appear in person, and cannot be inspected by the jury, it should still be open to traverse by the heir-at-law, carries a great absurdity with it, particularly in the case of idiocy, where the Crown grants the custody and profits of his estate during his life" (*r*). But the inquisition of a coroner finding a party *felo de se* may be traversed by his administrator, on the ground that the party was of non-sane memory, and that the coroner had refused to receive evidence of such fact (*s*).

The Lord Chancellor will sometimes discharge a commission and inquisition without putting the party to the expence and trouble of a traverse or *monstrans de droit*, provided, on inspection and examination, he be fully convinced of the soundness of his understanding. And the party may apply either personally to the Chancellor to be inspected, or his friends may sue out a writ, returnable in Chancery, for that purpose (*t*).

In a case where it appeared that a party who had been

(*p*) *In re Sir G. O. P. Turner*, 15 April, 1824.

(*q*) 3 Atk. 184; see *ante*, p. 74; *post*, Chapters ix. x.

(*r*) *In re Roberts*, 3 Atk. 312.

(*s*) *Ripley v. Oldfield*, Sir T. Jones, 198; S. C. 2 Show. 199; Skinn. 45.

(*t*) 9 Rep. 31. a; Bac. Abr. tit. Idiots and Lunatics, (B); Vin. Abr. tit. Lunatics, (E. 2.); F. N. B. 233, ed. 1794; Staundf. de Pr. Reg. 36; Wingate's Maxims, 123; *In re Heli*, 3 Atk. 7, 635; 3 Bl. Comm. 332; see *ante*, p. 93, and *post*, Ch. v. s. 11.

found an idiot was not so, all former proceedings were discharged (*u*).

But a motion, that a person who had been found a lunatic, and since recovered his understanding, might be inspected, and make a settlement of his estate, was refused; and it was directed that such settlement should be made by fine, in order that the Judges of the Court of Common Pleas might examine the party (*v*).

The Crown cannot traverse an inquisition, but a *melius inquirendum* may be granted on behalf of the Crown; and if, upon the *melius inquirendum*, it be found for the Crown, the party may traverse the inquest (*w*).

The alienee of a lunatic, or other person having a title to, or interest in, his land, may traverse an inquisition as well as the lunatic himself (*x*); and, if both the lunatic and the alienee traverse, and the former is found a lunatic at the time of the alienation, the alienee is bound (*y*). But a traverse taken by a *non compos* will not bind a purchaser, unless he is a party to, or consents to be bound by, such proceeding (*z*).

Leave to traverse is sometimes granted upon terms, such as upon condition that some third person, who claims under conveyances from the party, will agree to be bound by the event of the traverse (*a*). And a party submitting to be bound by a traverse, and afterwards refusing to be bound by it, is guilty of a contempt of Court (*b*).

A person who has entered into a contract with a *non compos* for the purchase of any portion of his property, is such an equitable alienee and owner thereof as will give him a right to traverse the inquisition.

The petitioner, as having an interest in respect of a contract with the lunatic for the purchase of two advowsons, impeached the execution of the commission, and prayed that the inquisi-

(*u*) *Darwin's case*, Ley. 25.

(*v*) *Anon.* 1 Vern. 155.

(*w*) 8 Rep. 168, b; *In re Roberts*, 3 Atk. 6; and see *Knight v. Duplessis*, 2 Ves. sen. 555; 4 Madd. 313.

(*x*) 15 Vin. Abr. tit. "*Lunatic*," (L); *Skinn.* 178.

(*y*) *In re Roberts*, 3 Atk. 312.

(*z*) *Ex parte Roberts*, 3 Atk. 7.

(*a*) See Bull. N. P. 212; 3 Atk. 184.

(*b*) *Ex parte Roberts*, 3 Atk. 308; 4 Bro. C. C. 238, n.

tion might be quashed, or that the petitioner might be at liberty to traverse. Lord *Eldon*, C., decided that a person who had become the *bonâ fide* owner in equity of two advowsons under a contract, was a party aggrieved by the finding of the jury, and had a right to traverse, and granted leave for that purpose to the petitioner; the issue being, whether the party was a lunatic at the time of the inquisition, and at the period to which the lunacy was carried back and since (*c*). And a person who had entered into a contract with another person, who was afterwards found a lunatic from a period antecedent to the date of the contract, was allowed to traverse the inquisition (*d*). And in one case, the passing of a decree against a defendant in a suit in Chancery was stayed for the purpose of giving liberty to the defendant to traverse an inquisition (*e*).

Sir *William Grant*, however, is reported to have expressed a doubt in a case where the alienation was overreached by an inquisition finding the party a lunatic with lucid intervals, whether the alienee, relying on the fact that the contract was executed during a lucid interval, could establish that fact by a traverse; an issue in such a case being the proper and effectual remedy (*f*).

In a case where a lady, who was entitled to a very considerable fortune, and had just attained the age of twenty-one years, but who was represented to be of very weak and infirm mind, had been carried off to Flanders, and there married by a gentleman; and the lady was afterwards found a lunatic under a commission taken out by her mother, Lord *Thurlow*, C., would not allow the husband liberty to traverse the inquisition, thinking that the way in which he had obtained the lady precluded him from being entitled to any assistance from the Court; and that the lady was in the most proper hands under the care of her mother, whose duty it was to discuss the marriage most seriously, and to see whether she could not, in that manner, get rid of the gentleman's pretensions (*g*).

(*c*) *Ex parte Hall*, 7 Ves. 260.

(*d*) *Ex parte Morley*, 9 Ves. 478.

(*e*) *Attorney-General v. Parkhurst* and others, 1 Ch. Cas. 112.

(*f*) *Hull v. Warren*, 9 Ves. 605;

and see *Ex parte Ferne*, 5 Ves.

832.

(*g*) *In re Fust*, 1 Cox, 418.

In a case, where a petition praying leave to traverse an inquisition of lunacy was presented by an entire stranger, without any interest, and an objection was taken upon that ground, and because no reason appeared for impeaching the inquisition; Lord *Eldon*, C., said, "this petitioner does not qualify himself by any interest; and he did not recollect any instance, in which the Court had permitted a mere stranger to traverse the inquisition. His Lordship would not say, without further consideration, when it might be necessary to decide the point, whether the Court would permit it or not. Whatever might be the rule in such a case, he hoped the wisdom, policy, and humanity of the law, with regard to these unhappy persons, would never be disappointed; his own experience enabled him to say, the Court had not been in the habit of discouraging any fair and reasonably provident application, with regard to the situation of a person allowed to be a lunatic; if, in the execution of the commission, he is more pressed than a tender and humane consideration of his circumstances authorize; as of a person not allowed to be a lunatic, but made the object of a commission. The present petition, as far as his Lordship could perceive upon the affidavits, laid no foundation whatever for impeaching the commission in any one circumstance that took place at the period of the finding of the jury; the petition must therefore be dismissed with costs, it being ill founded and most rashly preferred" (*h*).

Lord *Eldon* observed, in another case, that any individuals, who suppose their interests affected by the acts which the lunatic has done, have a right to apply to the Great Seal for leave to traverse the inquisition, which is never refused in any proper case (*i*).

It has been decided, that where an action has been commenced on the Petty Bag side of the Court of Chancery, but tried in the Court of King's Bench, that an application for a new trial must be made in the latter Court, which is to send back the record with final judgment upon it, and therefore the objection to the verdict should be there stated (*k*).

(*h*) *Ex parte Ward*, 6 Ves. 579.

(*i*) 2 *Wilson & Shaw*, 520.

(*k*) *Ex parte Baker*, 1 Cox, C. C.

418; see *Fraser v. Lloyd*, 19 Ves.

317; *Rex v. Knox*, Coop. C. C. 98.

A motion for a new trial of a traverse was formerly allowed to be made in the Court of King's Bench ; thus, where a defendant had been prevented by illness from attending the trial of a traverse, and, in consequence of no defence having been made, the jury had found in favour of the inquest, the Court of King's Bench granted a new trial, in order that the second jury might have an inspection of the alleged lunatic, and not be left to judge upon less evidence than was laid before the former jury (*l*). The defendant, after the trial of the first traverse, applied to Lord *Hardwicke*, C., to direct a new trial at the bar of the Court of King's Bench ; which was refused : but on application to that Court, and on payment of the costs of the trial of the former traverse, a trial at bar was granted (*m*).

Power is now given to the Lord Chancellor, when dissatisfied with any verdict returned upon any traverse, to direct one or more new trial or trials, as is usual in cases of issues directed by the Court of Chancery (*n*). And therefore, it should seem that, after the trial of a traverse, the application for a new trial should be made, in the first instance, in the Court of Chancery, as in cases where it has directed trials of issues ; and as well where the objection relates to the admissibility of evidence as to other points.

The uniform practice of the Court of Chancery has been, whenever an action has been directed by it, that the application for a new trial should be made to the Court of law which has tried the action, till that Court is satisfied with the verdict ; though it is otherwise with an issue, in which case the motion for a new trial is to be made in the Court of Chancery (*o*).

But if the Lord Chancellor should refuse to grant a new trial, there does not appear any reason, why an application for that purpose should not be made to, and granted by, the Court of Queen's Bench, as the statute 6 Geo. 4, c. 53, contains no express words depriving that Court of the power which it previously exercised in such cases.

(*l*) *Rex v. Roberts*, 2 Str. 1208.

(*m*) *In re Roberts*, 4 April and 23 May, 1744.

(*n*) 6 Geo. 4, c. 53, s. 3.

(*o*) *Ex parte Kensington*, Coop.

C. C. 96 ; *Bowker v. Nixon*, 6 Taunt. 444 ; see 4 Maule & Selw. 196 ; *Morris v. Davies*, 3 Russ. 318 ; *Footner v. Figes*, 2 Sim. 319.

Before the passing of the statute 6 Geo. 4, c. 53, if, upon the trial of a traverse, the jury returned an improper and irregular verdict, the practice was to supersede the commission. Thus, where upon a trial of a traverse, the jury found the party a lunatic at the time of her marriage, and at the period of the inquisition; but that she was of sound mind when the jury returned the verdict. The husband preferred a petition on behalf of himself and his wife, praying that the commission, inquisition, and other proceeding, might be set aside and vacated. Lord *Rosslyn*, C., said, "he had great doubt whether an instance could be found of such a double issue upon the traverse as that; the issue being, whether she was a lunatic at the time of the inquisition, and still was a lunatic. It did not appear that the jury had any right to find her a lunatic when she was married. The inquisition did not state her to have been a lunatic at the time of the marriage; there was no such allegation upon it. No other order can be made than to supersede the commission; which was accordingly done" (p).

The statutes of the 8th and 18th Hen. 6, direct a month to elapse between the return of the inquisition and the grant of the custody of the estate, that the party may come in and tender a traverse. And it seems, that if the grant is made before the expiration of the month, it is void (q). In case a traverse be tendered, the grant of the custody will generally be suspended, at least until further order; for, if upon the trial of the traverse the party be found *compos mentis*, the property cannot be taken. And therefore, where leave to traverse an inquisition had been granted, the Court refused to confirm the Master's report approving of committees (r).

In the case of an inquisition finding a party an idiot, which Lord *King*, C., thought a hard case, he would not grant the custody without giving leave to traverse the inquisition (s). And it seems, that, formerly, it was a common practice to suspend the grant of the custody, in order to give an oppor-

(p) *Ex parte Ferne*, 5 Ves. 832.

(q) *Frasier v. Progers*, Skinn.

178; see 3 Atk. 7, *ante*, pp. 88, 89.

(r) *Ex parte Wragg*, *Ex parte*

Ferne, 5 Ves. 450.

(s) *Ex parte Smith*, 3 Atk. 185.

tunity of traversing (*t*), particularly where the party, upon the second inspection, appeared to be in an improved state of mind (*u*). But, in a recent case, the Master's report as to the appointment of committees was confirmed, they being willing to act at their own expense, in case the traverse, which was pending, succeeded (*v*).

Before the statute 6 Geo. 4, c. 53, in case the Crown had not taken possession of the property, the traverse would prevent its being taken; and if successful, the Lord Chancellor had no authority to order costs to be paid out of the estate of the *non compos*. Thus, where a party had been found a lunatic under a commission, and, upon the trial of a traverse of the inquisition, the jury returned an irregular verdict, in consequence of which the commission was superseded; when the persons who had prosecuted it applied for their costs, as they had established the lunacy, and were not accountable for the irregular conduct of the jury; Lord *Rosslyn*, C., held, that he had no jurisdiction to give costs, there being no fund over which he had power, as the lands and goods of the lunatic had never come into the hands of the Crown (*w*).

Where the jury under the commission has determined that the object of it is of unsound mind, the consequence is, that the person who has authority to issue the commission is bound to make a grant of the custody of the person and estate; yet it is clear, that a person found by the inquisition to be of unsound mind, has an absolute right to require the farther proceeding of a traverse. No grant, therefore, of the custody could formerly be made, pending the traverse; and the Court if there was no fund in its hands, could not make an order as to the costs of the commission. When the determination of the party to traverse is known, the Lord Chancellor is bound to put the soundness of the verdict in that course of inquiry; in the interval, every thing with regard to the dominion over the property or person was formerly stopped; and the consequence was, that it was impossible to make any order about costs, as

(*t*) 3 Atk. 7.

(*u*) Ibid.

(*v*) *In re* Sir G. O. P. Turner,

15 April, 1824.

(*w*) *Ex parte Ferne*, 5 Ves. 833.

there was no fund upon which it could attach. But, in a case where a lady, who was plaintiff in a cause pending in the Court of Chancery, and entitled to funds in that Court, had been found by inquisition to be of unsound mind, and, on the petition of some of her friends, liberty to traverse the inquisition had been granted, and the parties who prosecuted the commission applied to the Court for their costs, which was opposed by the next of kin of the lunatic, because no committee had been appointed, and leave to traverse had been granted. As the Court, in that case, distinguished from its jurisdiction in lunacy, had in its possession a fund which could be appropriated to the payment of these costs, Lord *Eldon*, C., acting on the principles by which he was guided as to persons in a state of incapacity, though not objects of a commission of lunacy, and being satisfied that the proceedings which had been taken were for the benefit of the party, pronounced an order for the costs, desiring to be distinctly understood, as by no means thinking the costs of the traverse of course; that on the contrary, there may be many instances of persons permitted to traverse, who would have no right to costs; but the lunatic having been permitted to traverse after a personal examination, the costs of the traverse must be allowed (*x*).

In a case where a commission was superseded on the subsequent recovery of the lunatic, and no committee had been appointed, it was held, that no order for payment of costs could be made, as there was no fund on which the order could attach; and that the solicitor must look for his indemnity to the person by whom he was employed (*y*).

The petitioner having sued out a commission of lunacy at his own expense against a party, under which he was found to be a lunatic, and the party having died before a grant had been made of his estate, the Lord Chancellor refused to refer the bill of costs for taxation, or to make an order that the costs and expenses of the petitioner had been properly incurred for the benefit of the lunatic (*z*).

(*x*) *Sherwood v. Sanderson*, 19 Ves. 280; *S. C.* Coop. C. C. 108.

(*y*) *Ex parte Glover*, 1 Mer. 269.

(*z*) *In re Pinks*, Law, J. 1843, Ch. 57.

The Court will sometimes, where the lunacy of a person is in question, interpose, by making a provisional order for the care and custody of his estate, until the lunacy shall be finally determined (z).

The Court will protect the property of a supposed lunatic, in the interval between the presenting of a petition for a commission of lunacy and the finding of the jury; but it ought at the same time to take care that ample means for resisting the commission be furnished to those who act in the inquiry on behalf of the alleged lunatic (a).

In one case, where a commission of lunacy had issued, but had not been executed, an order was made by the Lord Chancellor to restrain the wife of the supposed lunatic, and all other persons in whose custody or power the personal estate and effects of the lunatic were, from selling or disposing of the same, or in any way converting the same to their own use, and from parting with the possession of the same, until order to the contrary; and it was ordered, that, leaving a copy of such order at the dwelling-house of the supposed lunatic should be good service (b).

And in another case, where a petition for a commission only had been presented, certain parties were restrained from interfering in any manner with the concerns of the supposed lunatic (c).

An order for appointing committees *ad interim* of a particular estate of the lunatic was made, and a reference was directed to the Master, to inquire whether any steps should be taken, either at law or in equity, to prevent the sale of effects belonging to the lunatic, under an execution which had issued against them (d).

Where a party against whom a commission had issued, prayed that it might be quashed, it was ordered that the commission should be executed at the end of three weeks, and not sooner, after the brother of the supposed lunatic should have

(z) *In re Heli*, 3 Atk. 635; *ante*, pp. 69, 70.

(a) *In re Holmes*, 4 Russ. 186.

(b) *In re King*, 15 Jan. 1827.

(c) *In re Galloway*, 28 July, 1827.

(d) *In re Sir G. O. P. Turner*, 23 Dec. 1823.

advanced to his solicitor, out of the property of the alleged lunatic, the sum of 1500*l.* (e).

By the statute 6 Geo. 4, c. 53, s. 4, it is provided, "that the person intrusted, by the King's sign manual, with the care and commitment of the custody of the persons and estates of lunatics, after the return of any inquisition, and notwithstanding any petition or order which may be depending, relating to a traverse of such inquisition, may make such orders relative to the custody and commitment of the persons, and the commitment, management, and application of the estates and effects of any persons who shall have been found lunatic, idiot, or of unsound mind, by any such inquisition as he shall think necessary or proper; and all acts, matters, and things which shall have been done by any persons appointed committees of the persons or estates of the persons found lunatic, idiot, or of unsound mind, as aforesaid, or by any other person or persons, shall be and are thereby declared as valid and effectual; and such committees and other persons respectively are indemnified in respect of such acts, matters, and things, against all actions, suits, and proceedings, damages, costs, and expenses to be brought, commenced, or recovered by the person or persons so found lunatic, idiot, or of unsound mind, as fully and effectually as if such inquisition had not been traversable, but no further or otherwise."

In one case it was ordered, that the custody of the person of a lunatic, *ad interim*, should be granted to his sister, and that a gentleman should be appointed the receiver of the estate of the lunatic, *ad interim*, if he would accept the office, and give security to account, to be allowed by the Master (f).

The allowance of a sum of money out of the estate of the party found a lunatic, towards defraying the expense of the traverse, is in a great measure subject to the Lord Chancellor's discretion (g).

The costs of an unsuccessful traverse of an inquisition of lunacy, were allowed out of the lunatic's estate upon an exception to the Master's report, by which a sum of money was found to be due from the estate of the deceased lunatic to

(e) *In re Baker*, 24 April, 1815.

(g) *In re Bridge*, 1 Cr. & Ph. 338.

(f) *In re Frank*, 11 Aug. 1825.

his solicitor, for the costs of an unsuccessful traverse to an inquisition of lunacy.

V. C. *Bruce* said, "it cannot be that an alleged lunatic is so far deprived of the means of defending himself, as to be prevented from having the benefit of a solicitor, unless the solicitor be employed by a third party, or lose his costs if the proceedings are unsuccessful; yet that would be the result if the present objection were allowed. I apprehend the law to be, that if a man is alleged to be a lunatic, whether truly or not, he may employ (as far as he can be said to exercise volition on the subject) a solicitor, not only to resist the commission, but afterwards, for the purpose of traversing it, and that, although the proceedings fail, the lunatic's estate is liable for the costs, subject to this—that if any thing fraudulent or unfair—or, perhaps I may go as far as to say frivolous or litigious—appears to have taken place on the part of the solicitor, the Court may say that no debt arises. There is no evidence of that nature here, and therefore, the amount of costs not being impeached, I must take it to be a fair debt" (*h*).

On the petition of the lunatic, it was ordered, that the committees of the estate should pay to the lunatic's solicitor the sum of money he required for the purpose of trying the traverse, on his undertaking to apply the same, or a sufficient part thereof, in the necessary expenses of the traverse, and to account for such money before the Master; and that the committees should be at liberty to oppose the traverse; and that the lunatic should be at liberty to appear on the trial of the traverse (*i*).

On the petition of the sister, next of kin and heiress-at-law of a lunatic, an order was made for granting the care and custody of the lunatic to the petitioner, until a committee of the person should have been appointed; and for delivery of the lunatic to the petitioner; and for restraining certain persons from visiting or interfering with the person of the lunatic without the Lord Chancellor's order (*k*).

(*h*) *Wentworth v. Tubb*, 2 Y. & Coll. N. S. 537; 7 Jur. 738.; *Williams v. Wentworth*, 5 Beav. 325, *post*, ch. viii. s. ii. div. 1.

(*i*) *In re Sir G. O. P. Turner*, 27 June, 1826.

(*k*) *In re Chapman*, alias *Dunn*, 1 Aug. 1829.

Where a petition to traverse the inquisition had been presented, and an immediate reference to the Master for appointment of committees could not be obtained; on the petition of the heir-at-law of a lunatic, it was ordered that the lunatic should be removed to a particular place, and that the petitioner should be at liberty to adopt such means as two physicians should approve, for the due care of the person of the lunatic, until the appointment of the committees of his person and estate, as thereafter directed; and it was referred to the Master, sitting during the vacation, to appoint proper persons (not the petitioner) to be the committees of the person of the lunatic *ad interim*; and that such committees, when appointed, should act under the direction of the physicians, with respect to the care of the person of the lunatic, until a permanent committee should be appointed, or until further order; and it was also referred to the Master to appoint proper persons to be committees of the estate of the lunatic *ad interim*, such persons giving such security as the Master should approve, and the circumstances of the case might require; and such committees of the estate and effects of the lunatic *ad interim* were also ordered duly to account for the same, until a permanent committee should be appointed, or until further order (*l*).

(*l*) *In re Brand*, 11 Sept. 1830. As to the committees and maintenance *ad interim*, under the new orders, see *post*, pp. 175, 176.

CHAPTER V.

OF THE COMMITTEES OF THE PERSONS AND ESTATES OF
LUNATICS.SECTION I.—*Of the appointment of committees.*

- II.—*Of the committee of the person.*
- III.—*Of the committee of the estate.*
- IV.—*Of the appointment of a receiver of the lunatic's estate.*
- V.—*Of the security required of the committee of the estate.*
- VI.—*Of the allowance for the maintenance of lunatics and their families.*
- VII.—*Of the allowance for trouble to the committees of the estates of lunatics.*
- VIII.—*Of the removal of committees.*
- IX.—*Of passing the accounts of committees.*
- X.—*Of the powers and duties of the committee of the estate.*
- XI.—*Of superseding the commission of lunacy.*
- XII.—*Of the delivery of the possession of the estates, and transfer of the funds, belonging to lunatics after their death.*
- XIII.—*Of the conversion of the real and personal estates of lunatics, as between their real and personal representatives.*

SECTION I.

Of the Appointment of Committees.

THE regular course pursued upon the return of the inquisition, where there is no traverse, or after the trial of a traverse upon which the party is found to be a lunatic or of unsound mind, is, for the Lord Chancellor, by letters patent under the Great Seal, to commit to one or more person or persons, during

pleasure, the custody of the person and management of the property of the lunatic, with a reasonable allowance out of his estate for the maintenance of him and his family (*a*).

The bill for the grant of the custody and for the revocation thereof, which was formerly prepared by the Clerk of the custodies, is now to be done by the Masters in Lunacy (*b*). The grant itself, which is a copy of such bill, is prepared in the office of the Secretary of lunatics on parchment, with a 2*l*. stamp, and is passed under the Great Seal.

The custody of lunatics being a branch of the Sovereign's prerogative, the appointment of the committees must necessarily be in the discretion of the person to whom that branch of the prerogative is intrusted; and to whom therefore the application for the appointment of committees must be made. There is no instance where a party has been found a lunatic under a commission, in which the Court of Chancery has interfered in such appointment (*c*). In the exercise of the discretion given to the person intrusted with the execution of this branch of the prerogative, certain rules have been regarded as best calculated to protect the person and interests of the unfortunate lunatic. "To prevent sinister practices," says Sir *William Blackstone* (*d*), "the next heir is seldom permitted to be committee of the person of the lunatic, because it his interest that the party should die. But it hath been said that there lies not the same objection against the next of kin, for it his interest to preserve the lunatic's life, in order to increase the personal estate by savings, which he or his family may be entitled to enjoy; the heir is, therefore, generally made the manager of the estate, it being clearly his interest by good management to keep it in condition, accountable, however, to the Court of Chancery, and to the *non compos* himself if he recover, or otherwise to his administrators."

Lord *Macclesfield*, C., very much disapproved of the rule of

(*a*) See the form of the grant in the Appendix; there are some forms of old grants of idiots and lunatics and their estates, in West's Symbol. part 1, sections 365, 368, 366, and 379; and a copy of a similar grant, in the 16 Car. 2, will

be found in Hargrave's MSS. in the British Museum, No. 292.

(*b*) Orders in Lunacy, 27 Oct. 1842, No. 6.

(*c*) *Murray v. Frank*, 2 Dick. 555.

(*d*) 1 Bl. Comm. 305; see *post*, p. 176.

our law, which gives the guardianship in socage to the next of kin to whom the land cannot descend. He would not allow the exclusion of the heir to the land to be founded in reason, but deemed it the offspring of barbarous times and the effect of a cruel presumption. Therefore, when he was applied to, on a like principle, for an order to remove a lunatic from the custody of Mr. Justice *Dormer*, who was the lunatic's uncle, and entitled to his estate as the person next in remainder, and who had, with the consent of the nominal committee of the lunatic's person, taken care of him for many years, and treated him with the greatest tenderness; his Lordship refused to make such an order (*e*). But notwithstanding this censure by one most deservedly of high authority, the rule of our law in respect to guardianship in socage, considered as one settling the right by nearness of blood without regard to personal qualifications, which was the point of view in which Sir *E. Coke* and those he follows extolled it, is surely very defensible; for it gives the custody of the infant's person to those who, in point of nearness of blood, have equal pretensions to the trust, without the same temptation in point of interest to abuse it (*f*).

The old rule, however, has not been adhered to for a great length of time; and therefore, in a case where a petitioner (being brother of the half-blood of a lunatic, and entitled in remainder to his real estate, and having been appointed committee of the real estate of the lunatic), had objected to being appointed committee of the person, under a conception that the appointment would be against the practice under the old rule, but afterwards applied to be appointed committee of the person, Lord *Eldon*, C., made an order for that purpose (*g*).

By the former practice in lunacy, the usual course was for the Lord Chancellor, on petition, to refer it to one of the Masters of the Court of Chancery, to inquire and certify who are the most fit and proper persons to be appointed the committees of the person and estate of the lunatic, and who are his heirs-at-law and next of kin, to whom due notice of attending

(*e*) *Dormer's case*, 2 P. Wms. Hargrave, see *post*, p. 176.

262.

(*g*) *Ex parte Cockayne*, 7 Ves.

(*f*) Co. Litt. 88, note (*b*), by 591.

the Master is directed to be given. The principle which leads the Court to call for the next of kin and the heir-at-law of lunatics, is, to receive from the persons probably entitled that assistance in the protection of the property, which persons having such expectant rights will be likely to afford, and not for the purpose of trying their title. But the report of the Master is not considered conclusive, for the parties may not choose to put themselves to the expense of trying their rights of representation, which may turn out to be worth nothing (*h*).

Several matters, which by the former practice in lunacy were the subject of distinct petitions and orders, are now considered and reported upon by the Masters in Lunacy under the general orders in lunacy.

The Lord Chancellor may, from time to time, order and direct that any of the inquiries and matters connected with the persons and estates of lunatics, usually referred to the Masters in ordinary of the High Court of Chancery, shall be referred to the two commissioners (now called Masters in Lunacy) or one of them, and such commissioners (Masters in Lunacy) shall, jointly or severally, have, perform, and execute all the powers, duties, and authorities, relating to the said inquiries and matters, so to be referred to them as aforesaid, then had, performed, and executed, by the Masters in ordinary of the said Court of Chancery, and such other duties for the security and advantage of lunatics and their estates, as the Lord Chancellor shall from time to time order and direct (*i*).

In pursuance of the above act, it has been ordered, "that all inquiries and matters connected with the persons and estates of lunatics, theretofore usually referred to the Masters in ordinary of the High Court of Chancery, (*except* inquiries under or by virtue of an act, 11 Geo. 4 and 1 Wm. 4, c. 60, "for amending the laws respecting conveyances and transfers of estates and funds vested in trustees and mortgagees, and for enabling Courts of Equity to give effect to their decrees and orders in certain cases," and also, *except* where the Lord Chancellor shall, from time to time otherwise specially direct,)

(*h*) *Ex parte Clarke*, Jac. Rep. 589; 19 Ves. 123; 1 C. P. Coop. 317.

(*i*) 5 & 6 Vict. c. 84, s. 3, *ante*, pp. 94—96.

be thereafter referred to the commissioners, Masters in Lunacy, for the time being."

"That all inquiries in lunacy then pending before any of the said Masters in Chancery, (*except* any inquiries under or by virtue of the said act of Parliament in the last order mentioned, and *except* where otherwise hereafter specially directed,) be transferred to the commissioners (Masters) in Lunacy" (*k*).

That the matter of each lunacy be for the purpose of the inquiries hereby authorized, considered as referred to the commissioners (Masters in Lunacy) from the date of the inquisition. That where any person has been, or may be, found lunatic under any commission, the commissioner (Master in Lunacy) do, from time to time, and without any special order in such matter, inquire and report who is or are the heir or heirs-at-law and next of kin of the lunatic, and the person or persons who would be entitled to his estate, or to shares thereof, under the statutes for the distribution of intestates' estates, in case he were, at the date of such inquiry, dead intestate, to whom due notice of attending the commissioner (Master) is to be given; and also inquire and report what is the situation of the lunatic and the nature of the lunacy; and who is or are the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the lunatic, and of what the fortune of the lunatic did, at the time from which he shall have been found lunatic, consist, and of what it consists at the time of such inquiry, and what is the amount of income arising therefrom, and in what manner and at what expense, and by whom and where the lunatic has been maintained, and whether anything and what is due, and to whom, in respect of such past maintenance, and to whom and out of what fund the same ought to be paid, and what is fit and proper to be allowed for the maintenance and support of the lunatic for the time past and to come, regard being had to the circumstances and estate of the lunatic, and from what time such allowance should commence" (*l*).

The Masters in Lunacy have prepared and issued instructions

(*k*) Orders in Lunacy, 27 Oct. 1842, Nos. 2, 3.

(*l*) Orders in Lunacy, 27 Oct. 1842, Nos. 9, 10, see *ante*, pp. 94—96.

for the state of facts to be submitted to them under the general orders in lunacy, and the evidence required in support of it (*m*).

“ That the commissioner (Master in Lunacy) may, from time to time, determine whether all, or how many, and which of the next of kin, or the heirs of the lunatic, shall (unless at their own costs) attend before him on any proceedings in the lunacy, and that no other of such parties shall be allowed costs out of the estate, unless by special order for that purpose” (*n*).

“ That the commissioner (Master in Lunacy) be at liberty, from time to time, and at the request of any party or otherwise, to make separate reports, or a separate report, and to state any circumstances as to the subject-matter of the report, specially, as he shall think fit” (*o*).

The report of the Master in Lunacy must be confirmed, and if any persons are dissatisfied with, or object to, the committees appointed by the Master, they may present a petition to the Lord Chancellor, praying that the Master's report may not be confirmed, or that other persons may be appointed committees, or that the Master may be directed to review his report. And the Court, upon hearing such petitions, will either decide the matter at once, or refer it back to the Master to review his report generally, or to take the particular objections of the parties into consideration (*p*).

Where the Master had approved of a person as a temporary committee of the person of the lunatic, and an application was made by the sister and some of the next of kin of the lunatic to have the report reviewed, Lord *Manners*, C., held, that, after the Master had reported a person fit to be committee, it is not the desire of the family, but the disqualification of the person reported fit, that, being laid before the Court, can form a ground to grant such a reference (*q*).

At the hearing of a petition and counter-petition in lunacy, the one praying the confirmation of the commissioner's report,

(*m*) See Instructions in Appendix. 1842, No. 16.

(*n*) Orders in Lunacy, 27 Oct. 1842, No. 15. (*p*) See forms of such petitions in the Appendix.

(*q*) *In re* Lord *Bangor*, 2 Molloy, 518.

(*o*) Order in Lunacy, 27 Oct.

and the other simply opposing it, the counsel for the first petitioner is entitled to begin. Upon a petition to confirm the commissioner's report, and a counter-petition, praying that the report might not be confirmed, the counsel for the first petition claimed the right to begin, and the counsel for the counter-petition contended that their petition was in the nature of exceptions to the report, and that, by analogy to the practice upon exceptions, they were entitled to begin. Lord *Lyndhurst*, C.—“This is not the case of particular exceptions to parts of the report, but in substance a general objection to the whole. The commissioner has reported upon a complicated state of facts, and has come to a certain conclusion. It is that conclusion which is objected to; the whole merits, therefore, must be gone into. I am to put myself in the situation of the commissioner, and to rehear the case. I think, therefore, that the most convenient course will be, that the same party should begin here, who began before the commissioner” (*r*).

On the petition of the heir-at-law of the lunatic against the confirmation of the Master's report appointing committees of the estates, it was referred back to the Master to review his report as to the approval of such committees; and in so doing the Master was directed to take into consideration the objection to the proposed committees, on account of their respective distances from the estates of the lunatic, and their being recommended by his mother, who had other children by the same father born before marriage; and the objection to the committee proposed by the heir, on account of his connection with the solicitor of the heir-at-law, and his situation as receiver to numerous estates under the management of the Court of Chancery (*s*).

In a case where two commissions of lunacy had been issued, under which two sisters were both found to be lunatics; in order to save expense to their estates (the total annual income not exceeding 133*l.* 8*s.*); it was ordered, amongst other things, “that all proceedings to be taken under the said commissions by virtue of that order, or any future order to be intituled in the matter of both lunacies, should be, so far as the

(*r*) *In re Bariatinsky*, 1 Phill. C. C. 442; Law J. 1844, Ch. 386.

(*s*) *In re Miles*, 17 Jan. 1831.

same should be practicable, carried on and prosecuted as if in the matter of one lunacy only; and the Master was to be at liberty, from time to time, to make one report in both matters" (*t*).

Committees of the estate were rarely appointed under the former practice without a reference to the Master, although there are instances of such an appointment by the Court without a reference where the property was very small (*u*).

On the death of one of the committees of a lunatic, where his property was very small, a new committee was appointed without the usual reference to the Master, and the old maintenance ordered to be continued (*v*).

Where a person has been found a lunatic or of unsound mind, by an inquisition taken in Ireland, and a transcript of it has been transmitted to the Court of Chancery in England, committees of the estate in England may be appointed without any inquisition taken there. Thus, where it appeared by a petition, that, by an inquisition taken on a commission issued under the Great Seal of Ireland, a party had been found of unsound mind, incapable of managing his own affairs; that the said lunatic was resident in Ireland, and possessed of a freehold and leasehold estate in Lincolnshire, but that no commission of lunacy had issued against the party in England; and that a transcript of the record of the inquisition in Ireland had been, by order of the Lord Chancellor of Ireland, transmitted to the Chancery of Great Britain, and duly entered of record in pursuance of the Act 9 Geo. 4, c. 78, s. 3 (*w*)—It was referred to the Master to inquire and certify who were the most fit persons to be appointed committees of the lunatic's estate mentioned in the petition, or elsewhere in Great Britain (*x*).

On the confirmation of the Master's report, approving of

(*t*) *In re E. C. Scott*, and *S. D. Scott*, 8 Aug. 1832.

(*u*) *Ex parte Farrow*, *In re Adams*, 1 Russ. & Mylne, 112; *In re Earl of Lanesborough*, Lloyd & G. temp. Plunket, 515; *In re Morris*, 6 May, 1826.

(*v*) *Ex parte Pickard*, 3 Ves. &

Bea. 127; *In re Lacy*, April, 1808.

(*w*) This statute was repealed by statute 11 Geo. 4, and 1 Wm. 4, c. 65, but re-enacted by the 41st section of the latter act; see *ante*, pp. 22, 23.

(*x*) *In re Newport*, 22 Dec. 1828.

committees, it was ordered that the care and management of the lunatic's estate in Lincolnshire and elsewhere in Great Britain should be granted to the petitioner, on his giving security; and a reference as to maintenance was directed at the same time (*y*).

Though a lunatic's lands be in Ireland, yet if the lunatic be resident at an asylum in England, the Lord Chancellor of Ireland cannot appoint a committee of his person (*z*).

There is a perfect equality of jurisdiction between the Courts of Chancery in England and in Ireland. When the lunatic is resident in Ireland, the Court in Ireland appoints a committee of his person; but when the lunatic is resident in England, the Court of Chancery in England is the proper tribunal to appoint the committee of his person (*a*).

Where an individual is found lunatic under an inquisition taken in England where the lunatic is resident, the appointment of committees of his person rests with the Lord Chancellor of Great Britain, notwithstanding that the property of the lunatic is situated in Ireland, and that a transcript of the record of the inquisition has been transmitted to the Chancery of that country, with a view to the appointment of committees of his estate by the Lord Chancellor of Ireland (*b*).

Lord *Cottenham*, C., thought that the mode in which the parties had dealt with his order, was practically to defeat it. He could not permit the person of a party, found lunatic, and resident in this country, to be placed under the management of a committee appointed in Ireland, or to be under any control not subject to his Lordship's jurisdiction. He should therefore compel the parties to apply for the discharge of the order of the Lord Chancellor of Ireland, nominating them committees of the person. The Master on the reference might possibly approve of these same individuals to be the committees; but their fitness would be matter for his consideration, and the

(*y*) *In re Newport*, 21 Feb. 1829.

(*z*) *In re B. a Lunatic*, 1 Ir. Eq. R. 181.

(*a*) *Ibid.*

(*b*) *In re Tottenham*, 2 My. & Cr.

39; see *In re Earl of Carysfort*, Aug. 21, 1828; *In re Knox*, 1829; *In re Newport*, 1829, 2 My. & Cr.

42, n.

order made in England to approve of committees of the person, and to inquire as to the heir-at-law and next of kin of the lunatic must be drawn up and prosecuted in the regular way (*c*).

It appears that in one case, where a person who had been found a lunatic petitioned to supersede the commission, on the ground that he enjoyed perfect and constant sanity of mind, the commission was not superseded, but the party was permitted to have the care and management of his estates for several years; and upon his again becoming disordered in his senses, a committee was appointed of his person and estate (*d*).

The Chancellor being himself a stranger to the private connections of individuals, allows those who are concerned in prosecuting the commission, or are connected with the lunatic by the ties of consanguinity, or have a vested or presumptive interest in his property, to propose committees before the Master; and they are generally reimbursed their expenses out of the estate.

A *caveat* may be entered in the office of the Secretary of lunatics against the appointment of committees: and then the Chancellor will not pronounce an order, unless notice has been given to the solicitor or party by whom or on whose behalf the *caveat* was entered, of the hearing of the petition (*e*). But persons desiring to be heard against such petition, should present a petition to the Lord Chancellor, stating the grounds of their opposition.

In a case where a petition for the appointment of committees of the person and estate of a lunatic had been presented, and a *caveat* had been entered against such appointment, an order was made, on the petition of the co-heiresses and three of the next of kin of the lunatic, that they should be at liberty to carry in proposals before the Master for the appointment of the committees of the person and estate, and that they should have notice of all other proposals to be carried into the Master's office, and the proceedings to be had thereon for that purpose (*f*).

(*c*) *In re Tottenham*, 2 Mylne & Craig, Rep. 39.

(*d*) *Ex parte Fermor*, *In re Er-*

rington, Jac. Rep. 404.

(*e*) *In re Galpine*, Nov. 1808.

(*f*) *In re Howell*, 8 Aug. 1829.

The Master is sometimes directed to make a separate report as to the committee of the person and estate (*g*). In case the Master has approved of improper persons as committees, the Lord Chancellor, on application, will direct him to review his report (*h*), or will appoint others, without requiring the Master to review his report (*i*).

An appeal against an appointment of a committee by the Lord Chancellor, may be made to the Queen in council (*k*). But the previous proceedings on the commission, to inquire whether or no the party be *non compos*, are on the law side of the Court of Chancery, and can be only redressed, if erroneous, by writ of error in the regular course of law (*l*).

A recognizance having been put in suit in Ireland against a surety for a receiver, who was in default, the defendant demurred on the Petty Bag side of the Court of Chancery to the replication on very technical grounds of want of certainty in the allegations, and the demurrer was overruled by the Lord Chancellor sitting on the common law side (*m*). The defendant then applied to the cursitor for a writ of error to be brought before the Exchequer Chamber, which the officer refused, there being no precedent for such a writ of error (*n*). On the defendant's moving that the officer should be directed to issue the writ, Sir *A. Hart*, C., said, "The writ lies from the Court of Chancery, when the Chancellor sits in it as a Court of law, as from the other Courts to the Twelve Judges. The King is not a party here except in the form of the name. The writ cannot be refused." But the Chancellor intimated that it would be better to rehear the argument on the demurrer before him, assisted by one or two of the common law Judges, upon the party undertaking not to bring a

(*g*) *In re Weatherell*, July, 1808.
See *ante*, 168.

(*h*) *In re Hardy*, Aug. 1808; *Ex parte Fermor*, *In re Errington*, Jac. Rep. 405.

(*i*) *Ex parte Le Heup*, 18 Ves. 221.

(*k*) *Pitts's case*, 3 P. Wms. 108; *Rochfort v. Earl of Ely*, 1 Bro. P. C. 450, Toml. ed.

(*l*) 3 Bl. Comm. 427, *ante*, p. 20.

(*m*) *Rex v. Dolphin*, 1 Molloy, 392.

(*n*) Mr. Justice *Blackstone* could find no trace of such a writ of error since the 14 Eliz. see 3 Comm. 49; and Lord Keeper *North* held, that such a writ did not lie. *Rex v. Cary*, 1 Vern. 131; see 4 Inst. 80, Dyer, 315, a.

writ of error afterwards; and in the mean time, as such writ would not stop execution, making payment or giving security before the rehearing was allowed (*o*).

The power of the Chancellor to appoint committees cannot be controlled by a testamentary devise of the custody; except in the case of a father appointing a guardian to his child, a *non compos* under the age of twenty-one years, until he attain that age (*p*).

When two or more persons are appointed committees, and one of them dies, the grant being joint, and a mere authority without any interest, the right to the custody of the lunatic's estate will determine; and it is necessary to obtain an appointment of new committees (*q*).

The office of committee of the person and estate being distinct, the grant to the committee of the *person* (though included in the grant to the committee of the estate), will not be vacated by the death or discharge of any of the committees of the estate, nor will the grant of the custody of the *estate* be vacated by the death or discharge of the committee of the person (*r*).

On the death, discharge, or retirement of a committee, a state of facts and a proposal for a new committee is to be carried into the office of the Masters in Lunacy. If the proposal be for the committees of the estate, there must be a general statement supported by proper affidavits of what the lunatic's property then consists. If the application relates to the committee of the person, the last allowance and scheme for maintenance should be stated, and if the last order for maintenance be of old date, the Master will inquire whether any variation can with advantage to the lunatic be made for his maintenance. Evidence is also required of the death or retirement of the late committee, and of the eligibility of the new party. The evidence on the latter point is of the same kind, and (if practicable), is taken by the Master in the same way as upon the first appointment under the tenth general order (*s*).

(*o*) *Rex v. Dolphin*, 2 Molloy, 26; see Hov. Suppl. to Ves. 1 Vol. p. 479, *ante*, p. 20.

(*p*) *Ludlow's case*, 2 P. Wms. 636.

(*q*) *Ex parte Lyne*, Cases temp. Talbot, 143; *Anon.* 2 Eq. Cas. Abr. 583; see Jac. Rep. 593.

(*r*) *Elmer*, 28.

(*s*) See *Elmer*, 43, *ante*, p. 167.

The committee of the estate *as such*, does not appear in the proceedings for the appointment of a new committee of the *person*, nor does the committee of the person *as such*, appear on the proceedings for the appointment of a new committee of the estate (*t*).

Committees and maintenance ad interim.—Under the former practice in lunacy, orders for provisional maintenance until the Master had made his general report, were sometimes made. (*tt*) It is now ordered that the Master in Lunacy be at liberty immediately after the inquisition, and without any special order in the matter, to make inquiry, and to report, whenever it shall seem necessary, upon the provisional care and management of the lunatic and his property, and as to maintenance until committees, or a committee, shall be appointed (*u*).

This order provides for any delay which may unavoidably occur under the tenth general order (*v*), and the usual course is to appoint an *ad interim* committee, and to approve of an annual or other sum to be paid on account of the maintenance, *ad interim*, of the lunatic, until all the inquiries under the tenth general order shall be completed (*w*).

The security for *ad interim* committees is by recognizance, and the amount is fixed by the Master. The recognizance is prepared and completed in the same way as that of receivers, and does not require the approval of the Attorney General. The Master on the completion of the security, makes his certificate to the Lord Chancellor, and it is filed with the Secretary of lunatics who prepares an office copy for the parties. The Master's report must be confirmed by the Lord Chancellor. If there should be a fund in Court, out of which the allowance for the maintenance has to be paid, a duplicate of the Master's certificate must be obtained and filed in the Chancery Report Office, where an office copy is prepared to be acted upon by the Accountant General. The appointment of the *ad interim*

(*t*) Elmer, 44.

(*tt*) *Ante*, pp. 159—162.

(*u*) Order in Lunacy, 27 Oct. 1842, No. 11.

(*v*) *Ante*, p. 167.

(*w*) Elmer, 30; see order for approving committees, and maintenance *ad interim* in the Appendix.

committee is complete on the filing of the Master's certificate, as no grant of the custody is made in such cases (*x*).

SECTION II.

Of the Committee of the Person.

THE committees of the person of a *non compos* are generally selected from his next of kin, not being his heir-at-law. Attempts, however, were formerly made to exclude the next of kin, on the same principle of interest which formerly excluded the heirs-at-law (*a*).

Where two of the next of kin of a lunatic preferred a petition to be appointed committees of her person, and it was objected, that, as they would be entitled upon her death to a distributive share of the personal estate, whose value might exceed that of the land, they had an interest in her dying; or, at least, supposing the personal estate likely to increase during her life, it would be for their advantage that she should remain for ever incapable of making a will. Lord *King*, C., observed, it was true where the party seeking the custody had been heir-at-law, or next entitled to the real estate upon the lunatic's death, an objection had prevailed upon that ground, though to an extent much more considerable formerly than of late years; but that a person was next of kin, so as to be entitled to a share of the personal estate, was not an objection, nor did he remember it to have ever prevailed as such; for the personal estate would probably increase during the life of the lunatic, and it was consequently for the advantage of the next of kin to preserve and be careful of such life. And his Lordship appointed one of the petitioners committee of the person (*b*).

(*x*) See *Elmer*, 31, 32.

(*a*) *Neal's case*, 2 P. Wms. 544.

(*b*) *Ex parte Ludlow*, 2 P. Wms.

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in the two cases last cited, that rule was considered not applicable to the next of kin, from their interest in the probable increase of the per-

The relations of a lunatic are not, without some specific and strong grounds of objection, to be passed over in the appointment of committees, and have their affliction increased by the insidious imputation which must be the consequence, for the mere purpose of introducing a stranger. The feelings of relations are not to be put in competition with the benefit of the lunatic; but a relation will not in general be excluded from the office of committee unless proved to be unfit. The governing principle has always been, that, if the connections by blood and affinity of the lunatic can supply a proper person for the office, the influence of the family, which ought to be confined in its own circle, is not to be transferred to a stranger (c).

But the claims of consanguinity, although entitled to great regard, create no right with respect to the appointment of a committee of the person; in case of misconduct or incapacity, the nearest relations will be set aside in favour even of strangers. In the case of a lady found a lunatic, the custody of whose person was committed to a stranger; the sister of the lunatic, who had proposed making considerable gain by the allowance for maintenance, preferred a petition, insisting, that, as next of kin, she would be the most proper committee; that, being entitled to administration upon the death of the lunatic, she would be most careful of the property; and that the objection to a guardian who was next of kin entitled to the inheritance did not apply to the present instance, there being no inheritance. The Lord Chancellor, however, held the appointment to be a matter of prudence, and no right; and would not remove the custody from the stranger, nor ever appoint a person committee of a lunatic, who would make a gain of the office. The sister

sonal estate during the life of the lunatic, is not satisfactory. To those upon whom the suspicion which was the foundation of that rule could attach, immediate gain is a stronger temptation than the hope of future advantage, subject to disappointment not only by the

casualties of life, but also, where the state of the lunatic admits it, by the liberal application of his income for maintenance. See 7 Ves. 590, *a*, note 44, 2nd edition.

(c) *Ex parte Le Heup*, 18 Ves. 227.

was directed to render a yearly account before the Master ; and the stranger was continued in the situation of committee (*d*).

And in another case it was held, that a person proposed as committee had rendered himself unfit for the office by an agreement to give to another person three-fourths of the profits as committee (*e*).

In a case where it appeared by the Master's report that the lunatic's property amounted only to the sum of 523*l.* ; and that the lunatic was a pauper belonging to, and supported by a parish ; and that the brother and sisters of the lunatic were in very indigent circumstances, and some of them absent—the Lord Chancellor appointed the rector and two other inhabitants and freeholders of the parish where the lunatic resided, committees of her person and estate, on their giving the usual security ; and, after payment of the taxed costs, the dividends from time to time to accrue in respect of the lunatic's estate, were ordered to be applied in her maintenance (*f*).

Where the *non compos* is a female, and unmarried, the custody of her person will be given to one of her own sex, in preference to one of the other. In a case where two persons related in the same degree to a female lunatic, the one a man and the other a woman, and neither of them being heir-at-law to the lunatic, contended for the custody, and the objections against the one were no stronger than those against the other, the custody was granted to the woman, as being of the same sex, and so probably better knowing how to take care of the lunatic ; and as it had been found by experience, that granting it to two had proved inconvenient, by occasioning lawsuits, and putting the estate to great expense, the custody was granted to one only (*g*).

Unless there exist strong reasons for exclusion, the custody of the person of a married man *non compos* will be committed to his wife ; and the custody of a married woman *non compos*, to her husband. Even in a case where the wife had been

(*d*) Lady Cope's case, 2 Ch. Cas. 239 ; 1 Eq. Cas. Abr. 277.

(*e*) *Ex parte Fletcher*, 6 Ves. 427.

(*f*) *In re Jones*, 5 Aug. 1825.

(*g*) *Ex parte Ludlow*, 2 P. Wms.

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committed for a contempt of Court, in not producing her husband before the Commissioners under a commission of lunacy, the custody of his person was granted to the wife, on her being discharged from the commitment (*h*).

In most cases, the strongest presumption is, that the wife of a lunatic is the most proper committee of his person, as being most capable of administering to his comfort, and most likely to alleviate his calamity; but, if the wife insists upon acting upon a system of her own, inconsistent with that recommended by the best advice, and her treatment is so injudicious as probably to promote his disorder, whether from her being under the direction of another person, or acting with her own inclination from want of judgment, or from motives of mistaken affection, although she is not on that account absolutely disqualified for the appointment, yet another person will be named to act with her.

The Master having approved of the wife of a lunatic and his uncle, as committees of his person, and of another person, who was not related to him, as committee of his estate, rejecting a proposal of the uncle and a friend of the family, a petition was presented by the mother of the lunatic, praying, that she and the uncle might be appointed committees of the person, and not the wife; and that the uncle and the friend might be appointed committees of the estate, instead of the person approved by the Master. Lord *Eldon*, C., said, that he should have felt great pain in exposing the wife to the possible consequences of being sole committee of her husband, and thought the Master quite right in not appointing her the sole committee. All who were acquainted with the subject, knew that a person who filled that office, in the exercise of which affection must be tempered with firmness, was often under the necessity of doing what was unacceptable to the object of his care; and a rooted, though unjust, aversion was the usual effect of a line of conduct, ungrateful perhaps to the feelings, but essential to the recovery of the lunatic. Difficulty arose from the different views of the parties; but, considering the circumstance by

(*h*) Lord *Wenman's* case, 1 P. Wms. 701.

which the wife was influenced, meaning extremely well, but much mistaken and misled by circumstances she could not understand, though her affection might produce a wish to be constantly with her husband, she must intrust his medical care and treatment to some persons in whose judgment and humanity she could confide; and as his Lordship could not be induced to take from her the care of his person, he must declare that it was for them not for her to determine what was medically right or wrong. He was therefore glad that the uncle, who was a physician, was willing to co-operate with her, and he appointed them joint committees of the person (*i*).

Where the immediate superintendence of the lunatic by his wife would operate injuriously to him, the Court will appoint her committee of the person, but will associate with her some other individual, to whom the particular care of the lunatic may be intrusted without the wife's interference (*k*).

An order is sometimes made, that the committees of the person of a lunatic be at liberty to appoint physicians to visit the lunatic from time to time as they may think proper (*l*).

In the appointment of the committee of the person of a lunatic, the Court will attend as far as possible to the wishes and inclinations of the lunatic (*m*).

The unfounded prejudice of a lunatic against a person proposed as committee has been taken into consideration in a case, where it appeared that the appointment as committee of one in the profession of the law would have a tendency to irritate the lunatic (*n*).

Sometimes the Court, on a reference to the Master to appoint committees, will recommend the Master to approve of such proper person or persons, if such should be proposed or could be found, whose place or places of residence in the county was or were such as to admit of his or their frequently visiting the lunatic, and inspecting the management of his concerns (*o*).

(*i*) *Ex parte Le Heup*, 18 Ves. 221.

(*k*) *In re Dyce Sombre*, Law J., 1844, Ch. 335; 8 Jur. 817.

(*l*) *In re Worsley*, 8 Aug. 1829.

(*m*) *In re Leacocke*, Lloyd & G. temp. Plunket, 498.

(*n*) *Ex parte Fletcher*, 6 Ves. 427.

(*o*) *Ex parte Fermor*, *In re Errington*, Jac. Rep. 405.

The custody of a lunatic may be granted to a *feme covert*, though not *sui juris*, but under the power of her husband. It is usual, however, to join the husband with her in that office (*p*).

If, when a committee of the person has been appointed, the parties in whose power the *non compos* is refuse to deliver him up, possession of his person may be obtained, either by *habeas corpus* or by application to the Lord Chancellor, who will make a summary order for the delivery of the *non compos* to the committee, or any other person appointed by him, and commit the parties in case of disobedience (*q*).

The committee of the person of the lunatic has an important and delicate trust reposed in him: it is his duty to administer all the comfort and amusement which the nature of the case will admit, and the funds of the lunatic will afford; and if the unhappy person be not under his immediate care, the committee ought to engage humane and proper persons to take charge of him, and to consult such intelligent and kind physicians as will employ their utmost skill and efforts for the purpose of restoring the individual to the enjoyment of his senses and his liberty. Cases undoubtedly occur, in which it is necessary to put lunatics under much restraint; but in the present age it is admitted, that kindness and reasonable indulgences not only promote their immediate comfort, but have a tendency to increase the probability of their being restored to a sound state of mind, a result which interested motives ought not to be allowed to retard or frustrate.

Each of such persons as shall be found lunatic, idiot, or of unsound mind by inquisition, shall be visited once at least in each year by one of the physicians appointed visitors under the stat. 3 & 4 Wm. 4, c. 36, and oftener if the same shall be deemed expedient by the Lord Chancellor. Within a convenient time after each visitation, such visitors shall report in writing to the Lord Chancellor, the state of mind and bodily health and general condition, and also the care and treatment of each

(*p*) 3 P. Wms. 111, note; *Ex parte Lyne*, Cas. temp. Talbot, 143; *Ex parte Mildmay*, 3 Ves. Jun. 2.

(*q*) *Ex parte Cranmer*, 12 Ves. 456.

such person so found idiot, lunatic, or of unsound mind who shall have been visited by such visitor (*r*).

Under the act, 3 & 4 Wm. 4, c. 36, the committees of the person of each lunatic on their appointment, are required to send to the visitors of lunatics the following information, viz., the place of residence of the lunatic—the addresses of the committees of the person and estate—the name and address of the medical attendant—reports as to the present state of the mental and bodily health of the lunatic, and of the mode of treatment—any change of the lunatic's residence, whether for a short or long period—any changes of committees or their addresses—and immediate notice of the lunatic's decease (*s*).

The misconduct of the committee of the person of a lunatic, with respect either to the treatment of his person, or the application of the sums of money allowed for his maintenance, or other purposes, may be represented to the Lord Chancellor, by petition, supported by affidavits, and be made the subject of judicial investigation and inquiry.

Thus, where the committees of the person of a lunatic had not substantially complied with an order, directing a particular sum to be advanced for his benefit, a reference was directed to the Master, to inquire as to its application. In this case, a sum of money had been ordered to be paid to the committees of the person of a lunatic for a specific purpose, and the committee of the estate presented a petition, alleging that such sum had not been applied according to the order; whereupon it was referred to the Master to inquire whether the order allowing a sum to the committees of the person as an outfit had been substantially complied with; and, in case the Master should be of opinion that such order had not been substantially complied with, then he was to direct the application of such part of the sum as he should be of opinion had not been properly expended, in such manner as he should think proper, in accordance with the former order (*t*).

(*r*) Stat. 3 & 4 Wm. 4, c. 36, pendix.
ss. 3, 4; see stat. in the Appendix.

(*t*) *In re Jodrell*, 13 Aug. 1829.

(*s*) See Instructions in the Ap-

A lunatic who had been convicted of an assault, but the period for whose imprisonment for the offence had expired, was ordered to be transferred to such private asylum, as the committee of the person, with the approbation of the Master, should direct (*u*).

Committee of person of lunatic to transmit yearly a certificate, &c., to the Lord Chancellor of Ireland.—That every committee, already appointed, or hereafter to be appointed, of the person of any lunatic shall, on the first day of March, in every year, transmit by the post, or deliver under cover, to the Lord Chancellor's Secretary, in Dublin, a certificate signed by him, of the actual place of residence of the lunatic at that period, and of any other place or places in which he may have resided during the preceding twelve months, or since the last report, and the nature of the accommodation provided for and enjoyed by the lunatic, including board, lodging, clothing, and medical attendance, and means of exercise in carriage, or on horseback, and the state of health, mental and bodily of the lunatic; and also (where the lunatic does not reside with the committee of the person), the particular days on which the committee has visited the lunatic during the past year, and also how much is paid for the board, lodging, and clothing of the lunatic, and for medical attendance, together with, in every case, a certificate of a medical practitioner, being a physician or surgeon (but not being the proprietor of, or usual attendant upon, any asylum where the lunatic may be confined), of the actual state of such lunatic in the several respects aforesaid, with such suggestions, as any such medical practitioner may think it proper to make, for the future benefit of the lunatic; and every such physician or surgeon, shall be entitled to a fee of one guinea for such attendance and certificate, to be paid at the time by the committee of the person, and to be repaid to him by the committee of the estate, to whom the same shall be allowed by the Master in passing his accounts (*v*).

(*u*) *In re M'Dermott*, 3 Dru. & War. 480; 2 Con. & L. 293; see 1 & 2 Vict. c. 27.

(*v*) 2 General Order in Lunacy, 27 March, 1843.

SECTION III.

Of the Committees of the Estate.

THE heir-at-law is the most favoured in the appointment to the committeeship of the estate, on the supposition that he has the greatest interest in taking care of the property, and preserving it in good condition (a).

On a petition that the lunatic's nephew and presumptive heir might be appointed committee of his estate, Lord *Manners*, C., held that it was almost of course, if the lunatic had a son of proper age, and in the country, and no particular objection to him, to appoint him the committee of the estate; and that he thought that the applicant stood in the place of such son: and therefore it was referred to the Master to examine and report, if any objection appeared to appointing the applicant committee of the lunatic's estate (b).

A relation of the *non compos*, or one interested in the estate, will, *cæteris paribus*, be preferred to a stranger (c).

A stranger may, however, be appointed committee; and, in one case, a neighbouring gentleman, who was considered likely to manage the property to advantage, was chosen (d).

In a case where a lunatic had two estates, situate at a distance from each other and of considerable value, the Court appointed a separate committee for each. The estates were of great value, one in *Warwickshire*, consisting partly of coal mines, which required considerable superintendence; and the other chiefly of houses and other leasehold property in *London* and *Middlesex*, with a rental amounting to more than £3000 a year (e).

The Court refused to appoint a Master in Chancery to the office of committee of a lunatic's estate, upon the ground that he would have to pass his accounts before some of the other

(a) 1 Bl. Com. 304; *ante*, 164, 165. 227.

(b) *In re Lord Bangor*, 2 Molloy, 518. (d) *Neal's case*, 2 P. Wms. 544.

(e) *Ex parte Le Heup*, 18 Ves. 449.

Masters; and that, if once allowed, might lead to such results as would be subversive of the due administration of justice; for, if one Master might be appointed a committee or receiver, every other Master might be a committee or receiver of some other lunatic's estate, and they would have to pass each other's accounts (*f*).

The practice in Ireland of appointing a Master in Chancery committee of the estates of a lunatic has been frequently disapproved of (*g*), and Sir *E. Sugden*, C., said, it was not his intention, in future, to allow the Masters to be committees of the estates of lunatics (*h*).

Sir *A. Hart*, C., observed, "That the practice which prevailed in Ireland, of appointing a Master of the Court committee of the estates of lunatics is objectionable, for he can have no direct knowledge, and the very purpose of the office is to acquire direct knowledge, and take an active part in the management, and in controlling the receiver, in warranting the ordering of payments and allowances, and generally guarding the safe exercise of the jurisdiction. Whenever any relation of the family will undertake it and give security, and is eligible, he, and not a Master, ought to be appointed committee of the estate (*i*).

It seems that a solicitor, who prosecutes a commission of lunacy, ought not to be appointed committee of the lunatic's estate (*k*).

The committee of the person of a lunatic is in many cases appointed committee of the estate also.

(*f*) *Ex parte Fletcher*, 6 Ves. 427. 445; 2 Con. & L. 233.

(*g*) *In re Earl of Lanesborough*, (*i*) *In re Hussey*, 1 Molloy, 226.

Lloyd & G. temp. Plunket, 504. (*h*) *Ex parte Pincke*, 2 Mer. 452,

(*h*) *In re Doolun*, 3 D. & War. post, p. 188.

SECTION IV.

Of the Appointment of a Receiver of the Lunatic's Estate.

IN case it be not thought expedient to intrust the committee with the receipt of the rents and profits of the estate, a receiver may be appointed for that purpose.

On the petition of the brother of a lunatic, praying to be named committee of his person, and that a receiver might be appointed of the estate, the heir-at-law (who, with such brother, was the only next of kin) declining to be committee of the estate, on account of his being unable, from his circumstances, to give the security required—Lord *Hardwicke*, C., after declaring it to be an unusual thing, appointed the petitioner committee of the person and estate, with a restriction not to receive any sums of money, part of the lunatic's estate; and referred it to the Master to appoint a receiver, who was to account and pay the balance to the Accountant-General, after paying what should be allowed to the petitioner for the maintenance of the lunatic (*a*).

Lord *Manners*, C., said, that in the appointment of a receiver it was extremely proper, as far as it was consistent with the interest of the lunatic, for the Master to look to the general wish of his family who was to be appointed; but the person whom the Master has appointed, when once appointed, must, to change him, be shewn incompetent, not merely another person more eligible (*b*).

In a case, where it appeared that no one could be procured to act as committee, and that the property of the lunatic consisted only of real estate and funds vested in trustees, Lord *Eldon*, C., made an order, that a receiver should be appointed, with a salary; who should be considered as committee, and give such security as should be satisfactory to the Attorney-General, as is done by a committee (*c*).

(*a*) *Ex parte Billinghamurst*, 1 Ambl. 518.

108.

(*c*) *Ex parte Warren*, 10 Ves. 621.

(*b*) *In re Lord Bangor*, 2 Molloy,

By the former practice the receiver was not always required to give the same security as a committee. Thus, it was referred to the Master to appoint a fit and proper person to be receiver of the lunatic's estate, and to allow him a reasonable salary for his care and pains therein; such receiver so to be appointed, first giving security to be allowed by the Master duly to account for what he should so receive, and to pay the same as the Lord Chancellor should direct (*d*).

Where the person who had been appointed committee of the person and estate of the lunatic had refused to accept a grant of the estate without compensation, and no person could be found who would act gratuitously, a receiver of the estate was appointed (*e*).

But the Court refused to appoint a receiver, on the application of the heir-at-law of the lunatic, who had been appointed one of the committees of the estate, and neglected to perfect his security; and it seems that the expense of a receiver is not to be incurred, in order that a person, who cannot give security, may be appointed committee (*f*).

A receiver will sometimes be appointed, where the committee resides at a distance from the estate (*g*).

A receiver may be appointed where the committee is infirm, although not resident at a distance; or where the management of the estate is attended with considerable trouble (*h*).

A reference had been directed to the Master to approve of a proper person as committee of the lunatic's estate, and the Master, by his report, approved of H. L., a near relation of the lunatic, as a fit and proper person to be appointed such committee; and an application was then made to the Court by some of the next of kin of the lunatic, (the report not having been confirmed), that it might be referred back to the Master to ascertain whether it would be for the benefit of the estate, which was greatly incumbered, to appoint H. L. the receiver of the rents and profits thereof, he being willing to accept, in respect of such appointment, a much less allowance

(*d*) *In re Squire*, 5 Aug. 1828;
see *post*, p. 188.

(*e*) *Ex parte Radcliffe*, 1 Jac. &
Walk. 639.

(*f*) *In re Frank*, 2 Russ. 450.

(*g*) *In re Seaman*, Aug. 1808.

(*h*) *In re Birch*, Aug. 1808.

than the amount of the poundage would come to and be payable to a receiver appointed in the usual way by the Court. The affidavits in support of the petition stated, that H. L. was approved of by the family of the lunatic, had been well acquainted with the estates and the nature thereof from a very early period of his life, that it would be beneficial to the estate that he should be appointed receiver, and that he declined to act as committee of the estate if another person were appointed. On these facts his Lordship made the order according to the prayer (*i*).

Where the committee of the person of a lunatic petitioned that he might be at liberty to propose before the Master the solicitor to the commission as receiver of the lunatic's estate, stating that nobody else was willing to accept the office of receiver—The Court refused to make the order, as it was extremely jealous of appointing any person to be receiver, whose duty it was to call the receiver to an account; and said that the same objection applied to appointing a person who acts as solicitor under the commission to be receiver of the estate, as to the appointment of a Master in Chancery to be committee or receiver (*k*).

Contrary to the general rule, a receiver may be appointed of the estate of a lunatic on petition only, without any bill having been filed, as is requisite in other cases, where the Court of Chancery appoints a receiver (*l*).

An order for the appointment of a receiver is obtained on petition, and directs the Masters in Lunacy to appoint a receiver. A copy of the order must be left with a proposal, stating the person to be appointed, and with evidence as to his respectability and qualifications, and naming also the parties proposed as his sureties. A summons is taken out on leaving, and to proceed. If the evidence is satisfactory, the security, which is by recognizance (*m*), is fixed upon a similar principle to the security by a committee. The papers relating to the security, are prepared in the Masters' office, and delivered to the solicitor

(*i*) *In re Sir James Langham*,
1 Jurist, 281.

(*k*) *Ex parte Pincke*, 2 Mer. 452;
see *ante*, p. 184.

(*l*) 1 Atk. 488; *Ex parte Whitfield*, 2 Atk. 315; *Ex parte Mountfort*, 15 Ves. 445, 449.

(*m*) See form in Appendix.

for completion. The recognizance duly entered into being returned to the Masters' office, and subsequently handed over to the Chancery Enrolment Office, the security is considered as complete, and the Master's report appointing the receiver, is prepared in the same way as other reports.

The salary to the receiver is generally reserved for consideration on passing his first account, though its amount may be fixed in the report appointing him (*m*).

There is no general rule as to the amount of the allowance to a receiver appointed by the Court, but it depends upon the degree of difficulty or facility experienced in the collection of the property (*n*).

If it appears on the receiver passing his accounts that his sureties are dead or bankrupt or insolvent, the Master in Lunacy is to fix a time for new security being given, and in case of default, to inquire or report who is the most fit and proper person to be appointed receiver of the estate of the lunatic, in the place of the receiver making default (*o*).

With respect to the powers of a receiver when appointed, it appears that he has very little discretion allowed him (*p*), for he must apply to the Court for liberty to bring or defend actions (*q*), or let the estate (*r*); and, in most cases, even to be allowed to lay out money in repairs (*s*). And it seems, that he cannot, without an order of the Court, distrain upon a tenant (*t*), unless the rent be in arrear, for any period short of a year (*u*).

A petition to grant a renewal to a tenant under a lease, with a covenant for renewal, presented by the receiver in a

(*m*) Elmer, 45, 46.

(*n*) *Day v. Croft*, 2 Beav. 488.

(*o*) Order in Lunacy, 15 April, 1844; 1 Phill. C. C. liv. see *post*.

(*p*) 6 Ves. 802; 15 Ves. 26.

(*q*) *Wynn v. Lord Newborough*, 3 Br. C. C. 88; S. C. 1 Ves. jun. 164; *Anon.* 6 Ves. 287; *Angel v. Smith*, 9 Ves. 335; 1 Jac. & Walk. 178.

(*r*) *Morris v. Elme*, 1 Ves. jun. 139; *Id.* 165.

(*s*) *Blunt v. Clitherow*, 6 Ves. 799; *Attorney-General v. Vigor*, 11 Ves. 563; see *Tempest v. Ord*, 2 Mer. 55.

(*t*) *Pitt v. Snowden*, 3 Atk. 750; *Raincock v. Simpson*, cited in 1 Dick. 120; *Hughes v. Hughes*, 3 Bro. C. C. 87; S. C. 1 Ves. jun. 161.

(*u*) *Brandon v. Brandon*, 5 Madd. 473; *Dancer v. Hastings*, 4 Bing. 2.

lunacy, without the concurrence of the committee of the estate was dismissed, with costs, by Sir *E. Sugden*, C., as quite irregular (*v*).

A receiver having applied to the Court for a reference to the Master as to the liability of a lunatic, to renew the leases of the lands over which the receiver was appointed, was ordered to pay the costs of the inquiry, as he had not previously applied to the committee to make the application to the Court (*w*).

A receiver of the estate of a lunatic, proceeding in a wrong form of action, which he was advised to abandon, and adopt another form of action, in which he succeeded for the lunatic, was refused the costs, amounting to 130*l.* of the former proceedings, although the Master reported that he had acted *bonâ fide*, and ought to be allowed such costs (*x*).

So a receiver who had without the sanction of the Court, defended actions arising out of a distress for rent made by him on the tenant of the estate, was not allowed his costs of such actions (*y*).

A receiver has generally a plain course to follow: he has only to pay into Court the money which he receives yearly, and to expend nothing extraordinary without an order of Court (*z*).

The Masters in Lunacy are jointly or severally to fix times within which receivers are to deliver in and pass the accounts, and pay and lay out balances, and in case of their default, shall disallow their salaries, and charge them with interest at 5*l. per cent.* upon balances, during the time the same shall appear to have improperly remained in hand, or uninvested, as the case may be (*a*).

(*v*) *In re Earl of Kilkenny*, 7 Ir. Eq. R. 594.

(*w*) *In re Doolan*, 2 Con. & L. 232.

(*x*) *In re Montgomery*, 1 Molloy, 419.

(*y*) *Swaby v. Dickon*, 5 Sim. 629.

(*z*) *Fletcher v. Dodd*, 1 Ves. jun. 85; *Waters v. Taylor*, 15 Ves. 25; and *post*, sect. 9.

(*a*) Order in Lunacy, 15 April, 1844; 1 Phill. C. C. liii. liv.; see *post*.



SECTION V.

Of the Security required of the Committee of the Estate.

AFTER the confirmation of the Master's report under the tenth general order of October, 1842, the committees must enter into the usual security within the time limited in the order of confirmation, which time is usually, two months from the date of such order.

In order to afford due protection to the property of lunatics, and to prevent its misapplication, the committees of their estates are required to give security, together with two responsible persons as sureties, for answering and duly accounting for the rents and income of the lunatic's property once in every year, or oftener if required.

It is the duty of the Attorney-General, on behalf of the Crown, to settle the amount of the requisite security; to approve of the sureties; and to see that the bonds are properly executed.

The form of security is a joint and several bond to the Crown from the committee, and two or more sureties (two being always required). The penalty of the bond is double the amount of the annual income of freehold, copyhold, and leasehold estate, when the income amounts to 250*l.*, and treble if the income be under that sum, and is also double the amount or value of any personal estate, which the committee may be in a situation, as committee, to receive. As for example, if the income from realty be 300*l.*, and there is personal estate, such as book debts, which the committee will have to get in to the amount of 3000*l.*, and household furniture and effects, and stock in trade of the estimated value respectively, of 500*l.* and 2000*l.*, such several sums of 300*l.*, 3000*l.*, 500*l.*, and 2000*l.*, making an aggregate amount of 5,800*l.*, and being doubled, give the amount of the penalty 11,600*l.* But if it were ordered that the proceeds of the stock in trade, and household effects when sold, should be paid into Court by the auctioneer, security would then be required for only the income of 300*l.*,

and the debts 3000*l.*, making the total sum of 3,300*l.*, the double of which would be 6,600*l.*, being a reduction of 5000*l.* But if the lunatic's income be derived partly from realty and partly from personalty, the security required is double or treble the amount of the income arising from such realty (according as the same amounts to 250*l.* or not), together with double the amount of the principal of such personalty.

If any of the income arising from the property transferred or paid into Court, can be received by the committee of the estate, the security required is double or treble the amount of such income, according as it amounts to 250*l.* or not. If there be no property but what is in Court, and the allowance for maintenance be ordered to be paid by the Accountant-General to the committee of the *person as such*, without passing through the hands of the committee of the estate, so that he receives nothing, the security required from the committee of the estate is only nominal, namely, for 100*l.* (a).

Even the eldest son and heir-at-law of a lunatic will not be appointed one of the committees of his estate without giving security, unless the Master reports that no person can be found to act as committee, who will give security. The elder son and heir-at-law of a lunatic having been appointed one of the three committees of his estate, and not having perfected his securities within the time limited, presented a petition praying that it might be referred back to the Master to certify who were the most proper persons to be committees jointly with the petitioner, without giving security; and that it might be referred to the Master to appoint a receiver of the rents, such receiver giving the usual security. But the Lord Chancellor said, that he could not appoint a committee without security, unless the Master reported that no person would act as committee, who would give security; and it was referred back to the Master to appoint committees of the lunatic's estate (b).

With a view to reduce the amount of the requisite securities, stock standing in the name of the lunatic, or any part of his outstanding estate, which can be paid into Court, or otherwise

(a) Elmer on Lunacy, p. 23, 24.

(b) *In re Frank*, 2 Russ. 450.

secured from the power of the committee, may be transferred into the name of the Accountant-General in trust in the matter.

The Court will in a proper case appoint a person committee of the lunatic's estate, without his giving security (*d*).

In cases where the lunatic's property is very small, and can be transferred into the name of the Accountant-General of the Court of Chancery, or otherwise satisfactorily secured, the usual security required of committees has been dispensed with. Thus, where the property of a lunatic was reported by the Master to consist only of 872*l.* 4*l.* *per cent.* Bank Annuities, and 100*l.* 3*l.* *per cent.* Bank Annuities, the brother of the lunatic was appointed committee of the person and estate of the lunatic, without entering into any security until further order, and the stock was ordered to be transferred into the name of the Accountant-General (*e*). And, in another case, where it appeared that the lunatic was possessed only of 1459*l.* Bank 3*l.* *per cent.* Annuities, standing in the name of the Accountant-General, and 197*l.* cash; on the death of the former committee, a new one was appointed without giving any security; and the residue of the cash, after payment of certain costs, was ordered to be invested in the purchase of like annuities (*f*).

Where a receiver of a lunatic's estate had been appointed, but it became necessary that the committee of the estate should be appointed for the purposes of a suit in Chancery. The Lord Chancellor, after a reference to the Master, appointed a committee of the estate until further order, without his giving the usual security, and under the circumstances, a receiver of the lunatic's estate having been appointed, it was ordered that such committee should be restrained from recovering any part of the property and effects of the lunatic until further order (*g*).

The order appointing the committees usually requires the security to be completed within two months.

But the Master in Lunacy is at liberty, by certificate under

(*d*) *In re Burroughs*, 1 Con. & Lawson, 309; 2 Drury & War. 207.

(*f*) *In re Lee*, 12 May, 1825.

(*g*) *Radcliffe v. Carter*, *In re Radcliffe*, 1 C. P. Coop. R. 253.

(*e*) *In re Hlicks*, 25 Feb. 1825.

his hand, and without any special order for that purpose, to enlarge, from time to time, the period within which any person approved of as committee of the estate of any lunatic ought to complete his security (*h*).

In order to obtain an enlargement of the time, the solicitor must, before it expires, apply at the Masters in Lunacy Office for a summons to enlarge the time, which must be served upon the solicitor for the next of kin in the usual way. At the return of the summons, if satisfactory reasons be given, and the Master in Lunacy be assured that the committees approved of, are really proceeding to complete the security, the time is enlarged by him as the circumstances may require, the usual time allowed being three weeks or a month (*i*).

Under the former practice in lunacy, the time for perfecting the security was enlarged where several mortgages, bonds, and promissory notes had been deposited in the Master's office, and the amount of the security required thereby reduced (*j*). And a similar order was made, where, partly owing to the largeness of the amount of the security required, and partly owing to the absence in France of one of the intended sureties, the security had not been perfected within the time limited (*k*).

Where the committee of the estate, through inadvertence, had omitted to complete the security required, the time for doing so was enlarged (*l*). And where a petition stated that one of the committees was in Ireland, and could not, without much inconvenience, return to England for three months, when the necessary sureties would be procured, the time for completing the security was enlarged (*m*).

Under particular circumstances, after the execution of the bond, such as the reduction of the outstanding estate, the original bond may, upon application, be given up, and security to a less amount taken (*n*).

The bond from the committees having been duly executed,

(*h*) 12 Order in Lunacy, 27 Oct. 1842.

(*i*) Elmer on Lunacy, 27.

(*j*) *In re Jones*, 13 Aug. 1827.

(*k*) *In re Clare*, 13 Aug. 1827.

(*l*) *In re Arrowsmith*, 22 Oct. 1828.

(*m*) *In re De L'Isle*, 1 Nov. 1828.

(*n*) *Ex parte Northleigh*, 2 Ves. sen. 673.

and returned to the office of the Masters in Lunacy, must be approved by the Attorney-General. In order to obtain his approval, the papers are laid before him by the Masters' clerk, and if the Attorney-General is satisfied with the security, he signs the bill of custody, which is the warrant from the Crown to the Lord Chancellor to pass the grant under the Great Seal (*o*).

The bill for the grant of the custody which is to be prepared in the office of the Masters in Lunacy (*p*), will be delivered to the solicitor who must file it with the Secretary of lunatics, and bespeak the grant (*q*).

The committee may petition to have his first bond delivered up, and to change the security by giving a greater; but, though this has the appearance of being intended for the benefit of the lunatic's estate, yet the application will not be granted without strict examination, lest the specious offer should cover, or afford the means of effecting, a fraud; for if, when the first bond was given up, no account had been rendered of part of the profits, there would be no remedy but from the time when the last bond was taken (*r*).

An order for reducing the security given by a receiver of a lunatic's estate has also, under particular circumstances been made.

On the petition of the committee and receiver of a lunatic's estate, it was referred to the Master to reduce the security entered into by the receiver of the lunatic's estate and his sureties, (in consequence of the transfer and payment into the name of the Accountant-General, and the deposit of the mortgage and other securities, as had been directed by a former order), to an amount corresponding with the condition of the estate and effects of the lunatic. And afterwards, an order was made, that the petitioner and his sureties should be at liberty to enter into fresh security, to the approbation of the Master, for answering the estate of the lunatic, and accounting for the rents and profits thereof once in every year, or oftener if

(*o*) Elmer on Lunacy, 27.

(*p*) 6 Order, 27 Oct. 1842.

(*q*) Elmer, 27.

(*r*) *Ex parte Pereira*, 2 Ves. sen.

674.

required; and that the former recognizance entered into by the petitioner and his sureties, be vacated and discharged; and that the clerk of the inrolments should attend the Master of the Rolls with the inrolment of the recognizance for that purpose (*s*).

The sureties in a committee's recognizance, the condition of which was that the committee should obey the orders of the Lord Chancellor with respect to the lunatic's estate, were held liable, on default of the committee, not only for the balance reported due from him on his accounts, but also for the costs of proceedings subsequently taken against him for the purpose of enforcing payment of such balance, although the sureties had no notice of the default of their principal until after those proceedings had been taken (*t*).

When the executors or administrators of a deceased committee have passed his accounts before the Master, and paid the balance into Court, the recognizance will be delivered up by the Master in Lunacy, to be vacated and cancelled.

On the recovery of the lunatic, after the commission has been superseded, the recognizance will be delivered up to be vacated and cancelled, on the committee passing his accounts and paying the balance to the lunatic.

Upon the death of a lunatic, the bond will be delivered up to be vacated and cancelled, on the committee passing his accounts and paying the balance into Court, or to the representatives of the deceased lunatic. In case the committee makes default in passing his accounts when required, the recognizance may be put in suit against him and his sureties.

If it is desired to reduce the amount of security which has been already given by a committee of the estate; a petition must be presented, showing the grounds for the reduction, which are usually the transfer of stock, or the payment of cash into Court, or the payment of a considerable fund for debts, or other purposes. The order made on the petition is left with the Master, with an affidavit shewing the then state of the lunatic's fortune, whereupon the amount of the security is fixed

(*s*) *In re Palmer*, 6 Nov. 1828. (*t*) *In re Lockey*, 1 Phill. C. C. 509;
Law J. 1845, Ch. 164. See *Dawson v. Raynes*, 2 Russ. 465.

according to the altered state of the property, and a new bond prepared by the Masters. The bond on being returned to the Masters, duly executed by the committee, and his securities is submitted to the Attorney-General, who, being satisfied, indorses his approval thereon, and it is returned to the Masters with whom it is deposited. The fees payable on these proceedings are as follows:—Bond and duty, 2*l.* 11*s.*; attending the Attorney-General, 10*s.*; the fees, 1*l.* 9*s.* 6*d.*; a certificate of the completion of the security, about 1*l.* 2*s.*; in all about 5*l.* 12*s.* 6*d.* (*u*).

Appointment of new Sureties for a Committee or Receiver.—It is ordered that every committee or receiver in any matter in lunacy shall, on each occasion of passing his accounts, or at such other times as the Masters in Lunacy may jointly or severally appoint, in that behalf satisfy the Masters or Master, by affidavit or otherwise, that the sureties of such committee or receiver are living, and have not been declared bankrupt or insolvent, and if it shall appear to the Masters or Master that any surety of such committee or receiver is not living, or has been declared bankrupt or insolvent, then that such Masters shall jointly, or severally fix the time within which such committee or receiver shall enter into fresh security as committee or receiver of the estate of such lunatic. And that in default of his doing so, the Masters shall jointly or severally (without special order), inquire and report, who is or are the most fit and proper person or persons to be appointed committee or committees, or receiver of the estate of such lunatic in the place of such committee or receiver so making default. And it is hereby further ordered, that in case any committee or receiver shall at any time make default in any of the matters aforesaid, the Masters or Master when it shall to them or him seem proper shall certify the same accordingly (*v*).

In case a surety should have died, or become bankrupt or insolvent, the security thus becoming insufficient, a new surety is required, and the Masters in Lunacy, on the summons taken

(*u*) Elmer, 41, 42; see form of C. C. liv., lv. See 8 & 9 Vict. c. 100, petition and order in the Appendix. s. 2, *ante*, p. 96.

(*v*) Order, 15 April, 1844, 1 Phil.

out for that purpose, and having proof of the death, &c. of the surety, fixes the time within which the committee or receiver shall enter into fresh security. The proof of death, &c. may be either by the affidavit, on verifying the account, or by a separate affidavit. The committee or receiver (as the case may be) then names a new surety, and furnishes evidence of the then state of the lunatic's property, and a new security and affidavits are prepared in the Masters' office, as upon the original appointment of a committee or receiver. In the case of a receiver's security becoming insufficient, a proposal for a new surety should be left in the Masters' office upon a summons, as upon the original appointment of the receiver; but in the case of a committee (except a committee *ad interim*) no such formal proposal is left. When the bond is returned to the office, duly executed by the committee and his sureties; together with the affidavit of the sufficiency of the sureties, the papers are submitted by the Masters' clerk to the Attorney-General for his approval (*w*). The Attorney-General having approved of such fresh security, the bond and other papers remain deposited in the office of the Masters; but in the case of a receiver, the security being by recognizance, such recognizance is, on being returned, duly entered into and handed over to the clerks of the inrolments in Chancery. The Masters then certify to the Lord Chancellor that the security has been completed, and their certificate is filed with the Secretary of lunatics, and an office copy taken of it in the usual way (*x*).

The Court of Exchequer refused to grant a *fiat* for an extent, on an application made by a committee of a lunatic against a preceding committee (on the usual bond to the Crown), where he had been declared a bankrupt under a commission of bankruptcy, issued against him so long as ten years before the application. The remedy of the party is by *scire facias* (*y*).

Where both the committee and sureties reside in Scotland, the Chancellor's jurisdiction does not reach them, and proceedings for enforcing the bond must be instituted in the Courts in Scotland; and the sum recovered in such an action

(*w*) See *ante*, p. 197.

(*y*) *In re Lacy*, 10 Price, 135.

(*x*) Elmer on Lunacy, 49, 50.

will be lodged in a bank there, to await the orders of the Lord Chancellor (z); and in order to enforce the security in such cases, the Masters in Lunacy will be required to deliver up the bond to be put in suit against the committees and their sureties.

Sureties are clearly liable to all the consequences which may arise from the committee disobeying the order of the Court, and, therefore, the sureties should ascertain that the committee discharges his duties with regularity, and if they neglect so to do, or trust to the Court, they must take the consequences. The sureties were held liable to pay, not only any balance found due from the committee, but also the costs and expenses, incurred in consequence of his neglecting to obey the orders of the Court for the payment of such balance, and that, although they might not be informed till afterwards of the default on the part of the committee (a).

If the committee should disobey an order for payment of what has been found due from him, the Chancellor, if he thinks fit, may enforce the order by attachment (b).

It was formerly questioned (c), whether the usual bond to the Crown entered into by the committee of a lunatic, was an obligation of the same force and effect as a statute staple within the 33 Hen. 8, c. 39, s. 50. But it has since been decided, that a bond given to the Crown by the committee of a lunatic on his appointment, is within the stat. 33 Hen. 8, c. 39, s. 50, and the Crown is entitled to treat it as matter of record, and to have a *scire facias* thereon. *Abinger, C. B.*, said, this is a case in which the Crown, by virtue of its office, is entitled to the custody of the lunatic, and may, therefore, take such securities as it thinks fit for the protection of his estate. The Crown exercises this custody by virtue of its prerogative, and did so from the earliest feudal times. This is therefore a bond taken

(z) *Erskine's Inst.*, by Ivory, 202, n. 245.

(a) *In re Lockey*, Law J. 1845, Ch. 164. See 1 Phill. C. C. 509.

(b) *Ex parte Grimstone*, Ambl.

706. See 1 & 2 Vict. c. 110, s. 18, *ante*, p. 18.

(c) *Rex v. Lambe*, M'Clelland's Rep. 402. 1 Cr. & Jerv. 408; 1 Tyrw. 383.

to the use of the Crown within the provisions of the stat. 33 Hen. 8, c. 39 (*d*).

SECTION VI.

OF ALLOWANCE FOR THE MAINTENANCE OF LUNATICS AND THEIR FAMILIES.

- 1.—*Of the maintenance of lunatics so found by inquisition.*
- 2.—*Of orders of the Court of Chancery respecting the property of lunatics, not so found by inquisition, for their maintenance.*
- 3.—*Of the protection, care, and management of the person and estate of lunatics, not found such by inquisition, under stat. 8 & 9 Vict. c. 100.*

1.—*Of the maintenance of lunatics so found by inquisition.*
—By the former practice, after the committees had been appointed, and perfected their security, the usual course was, for the Lord Chancellor on petition to refer the matter to the Master in Chancery (to whom it stood referred by the former orders), to settle what would be proper to allow for the maintenance of the lunatic out of his estate.

But a special reference for this purpose is not now in general necessary; for, when any person has been found lunatic, the Masters in Lunacy are without special order to inquire (amongst other things) what is fit and proper to be allowed for the maintenance and support of the lunatic for the time past and to come, regard being had to the circumstances and estate of the lunatic, and from what time such allowance should commence (*a*).

On the application to the Lord Chancellor for confirmation

(*d*) *Reg. v. Chambers*, 11 Mees. & W. 776; see *ex parte Usher*, 1 Ball & B. 197. (*a*) 10 Order, 27 Oct. 1842, *ante*, p. 167.

of the Master's report, any parties objecting to such report, can apply to him by petition: when the report will be either confirmed or referred back to the Master to review it.

In settling an allowance to the committee of a lunatic, the Court does not so much regard the benefit of his next of kin, as the comfort of the lunatic himself; with a view, therefore, that he may be afforded as much enjoyment as his unfortunate condition will admit, and his pecuniary resources procure, a liberal sum will generally be allowed for maintenance. The Master, on a reference, having reported that the sum of 300*l.* a-year was a proper allowance for the maintenance of a lunatic, whose disorder consisted of great imbecility of mind, and who had an income of 1700*l.* a-year, and had been placed in a private madhouse by his grandmother, at a time when he had no fortune—Lord *Eldon*, C., said, the allowance was too little, and that the lunatic, with his fortune, might be rendered more comfortable. It is not a judicious act (said his Lordship) for the Court to lay up 1400*l.* a-year for persons who may happen to be his next of kin at his death, when his own happiness may be promoted by a more liberal application of the property. To confine him in a private madhouse is very harsh, considering that his disorder is not of a nature to require coercion, nor of a species that gives much hope of recovery, which might render the treatment given in such a place expedient. And he could not see why the lunatic should not live in a house of his own, under the care of some relation. It was referred to the Master to review his report; and to consider whether it was not proper to apply a larger income for maintenance (*b*).

The allowance for the maintenance of a lunatic, previously directed to be paid, was ordered to be continued by the Accountant-General, without any deduction in respect of the income tax (*c*).

Where a person who had been found a lunatic under a commission, was afterwards tried for murder, and acquitted on the ground of lunacy, and ordered by the Judge to be detained in custody as a dangerous lunatic, and his committee presented a petition to have certain sums allowed out of his

(*b*) *Ex parte Baker*, 6 Ves. 8.

(*c*) *In re Liebenrood*, 6 Jur. 721.

estate for his support and the expense of his defence on the trial, and also, that he might be removed out of gaol to a proper receptacle for lunatics—Lord *Eldon*, C., said, there was a difficulty in the way, but ordered such sums to be paid, with liberty to the committee to make any application he thought proper respecting the custody of the lunatic, to the King in Council (*d*).

Increase of allowance for maintenance.—The allowance for maintenance will be augmented, according to the lunatic's circumstances. Where 350*l.* a-year had been allowed for the maintenance of a lunatic, whose income, in consequence of the death of a relation, amounted to the annual sum of 2000*l.*, Lord *Thurlow*, C., referred it to the Master to inquire into his situation, and what maintenance would be proper; for although, said his Lordship, 350*l.* might have been very adequate before, it is a miserable maintenance for a man of 2000*l.* a-year, unless he is in chains, or incapable of any degree of comfort. Next of kin and expectants are not to be considered; but the lunatic is to have every comfort which his circumstances will allow (*e*).

As the Sovereign is required by the statute *de prerogativa regis* to maintain, not only the *non compos*, but also his family, an allowance may be granted by the Chancellor for the maintenance of his children; and sums of money applied by the committee of a lunatic for the maintenance of his children have been allowed by the Court, where no previous order had been obtained for the purpose (*f*). But the regular and proper course is for the committee to apply to the Lord Chancellor previously to making any extraordinary payment for the benefit of the children of the lunatic, or of any other person. The Lord Chancellor has power to direct money belonging to the lunatic to be applied for the maintenance or advancement in life of his children (*g*), or for payment of their debts (*h*).

(*d*) *Ex parte Hill*, *In re Brooke*, Coop. C. C. 54; see 39 & 40 Geo. 3, c. 94, *post*, *In re Pearce*, *ex parte Clark*, 8 Jur. 89.

(*e*) *Ex parte Chumley*, 1 Ves. jun. 296.

(*f*) *Foster v. Marchant*, 1 Vern. 263.

(*g*) *In re Alderson*, April, 1808; *In re Jessop*, Aug. 1808.

(*h*) *In re Medhurst*, April, 1808. See *ex parte Lineham*, 1 Jones & Lat. 29, *post*, p. 211.

In many cases the whole income of the property belonging to a lunatic is ordered to be applied for his maintenance; and where that has not been done, an increased allowance may be obtained, if the situation of the lunatic or his family, or the state of his property, requires it.

Until a committee of the lunatic's person has been appointed, the Court will not make any order for payment of any sum out of the lunatic's income for the present maintenance of his wife and children (*i*).

The Court on a proper case being made will grant an increased maintenance to the lunatic, in order that the same may be applied for the support of the near relations of the lunatic (*k*).

It was referred to the Master to inquire and certify whether any addition was proper to be made to the allowance for the maintenance and support of the lunatic and his wife and daughter, regard being had to the present circumstances and estate of the lunatic, and the increased age of his daughter; and whether any sum ought to be allowed for the payment of bills incurred on her account (*l*).

It was held to be unnecessary to serve the assignees of one of the next-of-kin of a lunatic, who had become a bankrupt, with a petition for an increased allowance for the lunatic (*m*).

There was a reference in another case to the Master, to inquire whether any and what sums ought to be applied for the advancement of the sons of a lunatic, and out of what fund the same ought to be paid (*n*).

The Master was directed to inquire, having regard to the comfort of the lunatic and the circumstances of his estate, whether the sum allowed for keeping up a family residence should be increased, and whether the sum allowed to the committees of the person of the lunatic for maintaining his establishment should be also increased. On the confirmation of the Master's report, recommending additional sums of

(*i*) *In re B.*, a lunatic, 1 Ir. Eq. Rep. 181.

(*k*) *In re Creagh*, 1 Drury & Walsh, 323.

(*l*) *In re Le Heup*, 24 Dec. 1828.

(*m*) *Ex parte Chambers*, Law J. 1835, Ch. 175.

(*n*) *In re Watts*, 24 Dec. 1828.

money to be allowed for the last mentioned purposes, an order to that effect was made by the Lord Chancellor (o).

With respect to the application of the separate estate of a married woman towards her maintenance, Lord *Eldon* said, that the Court must look at the substantial benefit of the object of the commission; and must therefore consider the extent, not only of the husband's means, but of his obligation to maintain her; and, if the law would not compel him to contribute to her comfort in the degree in which he ought, the committee would be directed to apply a part of her separate income: but that it could be done only by arrangement (p).

There are, however, some instances of orders for the payment of the separate estate of married women, being lunatics, to their husbands. In a case where it was found by the Master's report that a married lady, who had been found by inquisition to be a person of unsound mind, was entitled under a settlement to the dividends of stock vested in trustees, upon trust for such persons as she should appoint, but not in the way of anticipation, and in default of appointment, in trust for her separate use, and the husband had been appointed sole committee of her person and estate on giving the usual security—It was ordered that the dividends, to which the lady was entitled for her separate use, should be paid to her husband, to be applied by him in her maintenance, until further order (q). And by another report, made by the Master, it appeared that the wife of the lunatic was entitled to a rent-charge of 200*l.* settled to her separate use; that she had two sons; and that the annual income of the husband, the sole committee of the person and estate, consisted of the dividends arising from 2499*l.*, Bank Annuities, and the annual sum of 258*l.*, which was insufficient to support the lunatic, and to educate her children in a proper manner—It was ordered that the said annuity of 200*l.* should be paid to the husband as committee of the estate, until further order; and he was to give

(o) *In re Starkie*, 18 Aug. 1828; see Appendix.

(p) *Brodie v. Barry*, 2 Ves. &

Bea. 39; see *Nettleship v. Nettleship*, 10 Sim. 236, *post*, p. 218.

(q) *In re Evans*, 24 May, 1826.

credit for the same in passing his accounts before the Master (*r*).

In another case, where a married lady, who had been found a lunatic by inquisition, was entitled to the dividends of stock, amounting to 796*l.* 4*s.* *per annum* for her separate use—It was ordered, that 400*l.* *per annum* should be paid to one of the committees of the person of the lunatic, to be applied for her comfort and maintenance, in the manner directed by the order, and that the remainder of such dividends should be paid to her husband as her other committee (*s*).

Allowance to lunatic's relations.—The practice of making an allowance to the immediate relations of a lunatic, other than those whom the lunatic would be bound by law to provide for, has been extended to the case of his brothers and sisters and their children, and is founded, not on their supposed interest in the property, which cannot exist during the lunatic's lifetime, but upon the principle that the Court will act with reference to the lunatic, and for his benefit, as it is probable the lunatic himself would have acted if of sound mind. The amount and proportions of such an allowance are, therefore, entirely in the discretion of the Court (*t*).

It is stated that the origin of the practice of granting an allowance for the relations of a lunatic (other than those whom the lunatic is bound by law to provide for) has been traced to an order of Lord *Thurlow*, C., in the matter of *Cotton*, which was made upon an objection to a report, allowing maintenance generally, without specifying the proportions which were meant to be granted to the relations respectively. It was referred back to the Master to review his report; who thereupon certified that the sum allowed was appropriated; and, after specifying the sum allowed for the lunatic himself, stated that the remainder was to be divided among his immediate relations. Lord *Thurlow* confirmed that report, and directed the allowance to be paid by, and allowed to, the committee, on passing his accounts (*u*).

(*r*) S. C. 8 March, 1828.

(*s*) *In re Cay*, 16 April, 1829.

(*t*) *Ex parte Whitbread*, *In re*

Hinde, 2 Mer. 99. But see 1 Coll. on Lun. 246.

(*u*) 2 Mer. 100, n.

On a reference to the Master to inquire and certify whether it would be reasonable and proper, that any, and what, increase should be made to the then allowance for the maintenance and support of the lunatic, regard being had to his circumstances and estate, and also to the situation of his immediate relations, and from what time such increase should take place. The Master, by his report certified, that an increase should be made in the allowance for the support of the lunatic; and with respect to the lunatic's immediate relations, he submitted, that regard being had to their respective circumstances, the several yearly payments in his report mentioned should be made to them respectively out of the increased allowance. No objection was taken to the report, which was ordered to be confirmed; but the order was not drawn up. A petition was then presented by a niece of the lunatic, one of the immediate relations provided for by the report, who conceived herself aggrieved by the Master's apportionment, praying that the minutes might be varied in the several particulars specified, and especially that the report might not be confirmed as to the apportionment of part of the lunatic's allowance among his relations in the manner therein mentioned; but that the Lord Chancellor would be pleased to make such order or declaration as would enable the petitioner to receive such other proportion of the said allowance as the petition required; but no order was made upon the petition. Lord *Eldon*, C., observed, "for a long series of years the Court has been in the habit, in questions relating to the property of a lunatic, to call in the assistance of those who are nearest in blood, not on account of any actual interest, but because they are most likely to be able to give information to the Court respecting the situation of the property, and are concerned in its good administration. It has, however, become too much the practice, that, instead of such persons confining themselves to the duty of assisting the Court with their advice and management, there is a constant struggle among them to reduce the amount of the allowance made for the lunatic, and thereby enlarge the fund which, it is probable, may one day devolve upon themselves. Nevertheless, the Court, in making the allowance, has nothing to

consider but the situation of the lunatic himself, always looking to the probability of his recovery, and never regarding the interest of the next of kin. With this view only, in cases where the estate is considerable, and the persons who will probably be entitled to it hereafter are otherwise unprovided for, the Court, looking at what it is likely the lunatic himself would do if he were in a capacity to act, will make some provision out of the estate for those persons. So, where a large property devolves upon an elder son, who is a lunatic, as heir-at-law, and his brothers and sisters are slenderly or not at all provided for, the Court will make an allowance to the latter for the sake of the former, upon the principle that it would naturally be more agreeable to the lunatic, and more for his advantage, that they should receive an education and maintenance suitable to his condition, than that they should be sent into the world to disgrace him as beggars. So also, where the father of a family becomes a lunatic, the Court does not look at the mere legal demands which his wife and children may have upon him, and which amount, perhaps, to no more than may keep them from being a burthen on the parish—but considering what the lunatic would probably do, and what it would be beneficial to him should be done, makes an allowance for them proportioned to his circumstances. But the Court does not do this because, if the lunatic were to die to morrow, they would be entitled to the entire distribution of his estate, nor necessarily to the extent of giving them the whole surplus beyond the allowance made for the personal use of the lunatic. There is difficulty as to the extent of relationship to which an allowance ought to be granted. There are instances in which the Court has, in its allowances to the relations of the lunatic, gone to a further distance than grandchildren—to brothers and other collateral kindred; but the principle is, not because the parties are next of kin of the lunatic, or as such have any right to an allowance, but because the Court will not refuse to do, for the benefit of the lunatic, that which it is probable the lunatic himself would have done” (*u*).

The principle on which the Court acts in the case of an

(*u*) *Ex parte Whitbread, In re Hinde*, 2 Mer. 101—103.

infant eldest son, by giving for his maintenance a much larger sum than he can possibly require, is, in order that his brothers and sisters may be so brought up and educated, and placed in such situations as to do him credit in the world (*v*).

A petition was presented by a mother on behalf of her infant son, by which it appeared that a lunatic was tenant for life of estates of the annual value of 1190*l.*, with remainder in tail to the petitioner, an infant of the age of eight years, and the great nephew of the lunatic; and that the surplus income of the lunatic's estates, after payment of the allowance for maintenance, amounted to the annual sum of 800*l.* That the lunatic was seventy-five years of age, had been declared a lunatic twenty years, and was then in a most hopeless state of lunacy. That the mother of the infant petitioner had only an income of 40*l.* for their maintenance. The petition prayed a reference, to inquire into the state and circumstances of the lunatic, as to his family and relations, and particularly as to the circumstances of the petitioner, the infant, and whether his mother was capable of properly maintaining and educating him, with reference to his rights, interests, and expectations, upon the death of the lunatic; and to certify whether it would be proper, that any increase should be made to the allowance for the maintenance of the lunatic, regard being had to his circumstances and estate, and also to the situation of the petitioner, the infant; and whether it would be proper that any, and what, allowance should be made to any person, and to whom, towards the maintenance and education of the petitioner, the infant, out of the rents and interest of the lunatic's estate. The petition stood over for some time, to give an opportunity to the committee to answer certain affidavits in support of it; and as it afterwards appeared that the surplus income of the lunatic was required for several contingent expenses, as renewing leases of his property; and that the lunatic, every other day, was capable of expressing his wishes as to the application of his property—Lord *Brougham*, C., although he recognised the doctrine of Lord *Eldon* in the

preceding case, refused to make the order prayed by the petition last stated (*w*).

An allowance out of an estate belonging to a lunatic, to assist in educating children entitled to the estate in remainder after the lunatic, and whose mother (the petitioner) was entitled to a jointure which would, under a covenant, be chargeable on the estate, was refused by Sir *E. Sugden*, C., as out of all order, and without precedent; it being to take one man's money and give it to another (*x*).

Payments out of a female lunatic's income, which was considerable, for the better maintenance and support of her nephews, who were two of her next of kin, were ordered. Lord *Cottenham*, C., observed, that he entertained great doubts with respect to the power of the Great Seal to grant, and with respect to the propriety of granting allowances to relations of lunatics, for whom the lunatic was not legally bound to provide, and that Lord *Eldon* had great difficulty in acceding to such an application (*y*). The practice, however, was one which could not be regarded with too much caution, and the principle involved in it ought to be narrowed rather than extended. As, however, the principle had been so far followed, and as there seemed no probability that the lunatic would recover, or would be capable of greater enjoyments than those which were then afforded to her, the order was made (*z*).

Orders for the maintenance of the daughters of lunatics have been made, on their marriage, in several cases, but in all of them the Master has been directed to receive and approve proposals for a settlement of her fortune (*a*). The allowance made out of a lunatic's estate, for the maintenance of himself and his daughters, the lunatic being of advanced age and in a helpless state of insanity, was increased in consideration of the intended marriage of one of the daughters, and a portion of such increased allowance was appropriated to the joint estab-

(*w*) *In re Windsor*, 21 Dec. 1831.

(*z*) *In re Blair*, 1 My. & Cr. 300.

(*x*) *In re Earl of Lanesborough*,
7 Ir. Eq. h. 606.

(*a*) 1 My. & Cr. 631, n.; *Ex parte Fowler*, *In re Fowler*, 6 Jur.

(*y*) *Ex parte Whitbread*, *In re*
Hinde, 2 Mer. 99. 431.

ishment of her and her intended husband, and was directed to be settled to her separate use ; and a sum of money, approved by the Master, was also ordered to be paid to her out of her father's estate, by way of outfit on her marriage (*b*).

In one case, where the Master had reported that the income of the lunatic was sufficient to allow the sum of 200*l.* a-year to be paid to each of his married daughters, and that the same ought to be allowed from the date of the commission, and that, from a subsequent period, an annual sum ought to be paid for the support of each of the lunatic's married children, in proportion to the income of the lunatic, and the wants of himself and his wife, and the other branches of his family ; and that the net annual income of the lunatic ought to be divided into thirty-two equal parts, seventeen of which should be allowed for the support of the lunatic, his wife, and his two unmarried daughters, and the remaining fifteen parts paid to the four married children and the children of a deceased child—an order for apportioning the income of the lunatic amongst himself and his children and grandchildren was made (*c*).

A petition was presented for a natural child, by his mother and next friend, whereby it appeared to have been the intention of a lunatic to give a natural child a liberal education, and the mother had not sufficient means for his support or for carrying those intentions into effect. Lord *Lyndhurst*, C., declared, that, under the particular circumstances of the case, the natural child ought to be maintained and educated out of the estate of the lunatic, and referred it to the Master, to inquire and certify what would be a fit and proper sum to be allowed for the past and future maintenance and education of the child (*d*).

A reference was directed to the Master to inquire what ought to be allowed for the maintenance of the illegitimate children of a lunatic, but refused as to their mother (*e*).

An annuity was allowed out of the income of the lunatic's

(*b*) *In re Drummond*, 1 My. & Cr. 627. see *Bradshaw v. Bradshaw*, 1 Jac. & W. 647.

(*c*) *In re Freak*, 14 Aug. 1830.

(*e*) *Ex parte Haycock*, *In re*

(*d*) *In re Jodrell*, 14 Aug. 1828 ; *Jones*, 5 Russ. 154.

estate, which was very considerable, as a retiring pension to an old personal servant of the lunatic, who was obliged to retire from his service by reason of age and infirmity, the committees being satisfied that the allowance was one which the lunatic, if he should ever recover, would approve (*f*).

The Lord Chancellor has not jurisdiction in lunacy, upon the application of a creditor of the heir-at-law and sole next of kin of the lunatic to order an allowance made to him out of the lunatic's estate, for his support, to be applied in payment of his debts (*g*).

Out of what fund maintenance to be paid.—Where the lunatic has two funds applicable towards his maintenance, and both are not required for that purpose, it will be charged on one fund exclusively of the other, if such arrangement is beneficial to the lunatic's estate. A mother, whose only daughter, a lunatic, was entitled to a large real and personal estate under her father's will, bequeathed the residue of her estate and effects to trustees, upon trust to apply the interest, amounting to about 1600*l.* a-year, towards the maintenance and support of her daughter, and otherwise for her comfort and advantage, as they should think proper, without being liable to account: and after her decease to pay the principal, and also such interest as should not have been actually so applied, to the testatrix's nieces. The Master found, that the residue of the mother's estate amounted to about 1600*l.* a-year; that an annual sum of 1200*l.* was proper to be allowed for the maintenance of the lunatic; and that the whole of that allowance ought to be paid out of the income to arise from the property to which she was entitled under her mother's will. The next of kin prayed a confirmation of the Master's report; and the trustees under the mother's will presented a counter petition, praying that the lunatic's allowance might be charged, either entirely or at least rateably, on the income of the property which she derived from her father. The Court held that the testatrix intended that the fund should be applied, in the first instance, for the maintenance, support, and clothing of her

(*f*) *In re Earl of Carysfort*,
1 Craig & P. 76.

(*g*) *Ex parte Linehan, In re Henes-*
sy, 1 Jones & Lat. 29; see *ante*, p. 202.

daughter; it might turn out, eventually, that it was not a sufficient provision; which would explain the use of the word "towards;" and if there was any surplus, she gave it to the legatees over. Under these circumstances, it being for the interest of the lunatic, and not contrary to the intention of the will, it was held that the charge should be wholly borne by the maternal estate (*h*).

Where a lunatic had estates in England and Scotland, it was ordered that the burthen and expense of the maintenance and debts ought to be borne in a rateable proportion between his real and personal estates in England, and his real and personal estates in Scotland, regard being had to the respective incomes and produce of each estate; and the Master was directed to inquire into, and settle, the proportions accordingly (*i*).

An order in lunacy for payment of an allowance to the committee out of the rents and profits of his estate does not create a debt, otherwise than as there is a fund to pay the maintenance. A testator gave to his wife all his goods, chattels, and personal estate whatsoever, and charged his real estates with the payment of his funeral and testamentary expenses and debts, and exempted his personal estate from the payment thereof. He then gave pecuniary legacies to two of his children, and charged his real estate with the payment of them, and directed that, during the minority of the legatees, his trustees, their heirs, and assigns, should raise out of the rents of his real estate, or by any other means they might deem expedient, annual sums for the maintenance of the legatees, not exceeding four per cent. per annum upon their respective legacies. Some years afterwards the testator was found a lunatic, and by an order in the lunacy, £4250 was allowed yearly for the maintenance of him and his family, and such allowance was to be

(*h*) *In re Ashley*, 1 Russ. & Mylne, 371.

(*i*) *Marquess of Anandale v. Marchioness of Anandale*, 2 Ves. sen. 381; Reg. Lib. 1750, B. fol. 612-13; see *Woodhead v. Marriott*,

1 C. P. Coop. 64, as to the order in which the property and income of a lunatic (not found so by inquisition) derived under three different titles is applicable to the lunatic's support.

made from the 6th April, 1834, and to be continued from time to time until further order, and to be paid to his wife by the committees of his estate, out of the rents and profits thereof. The testator died on the 6th October, 1839. His wife had received all that was due in respect of the allowance, down to the 6th April, 1839, but nothing afterwards. She claimed under his will, his personal estate, including the rents of his real estates, due at his death, free from the payment of his funeral and testamentary expenses, debts, and legacies; and she also claimed one moiety of £4250 for the last six months of the testator's life, and insisted that it ought to be raised as a debt out of the real estates:—It was held, that the funeral and testamentary expenses, debts, and legacies, were payable out of the real estates only, and that the widow was entitled to the whole of the personal estate, including the arrears of rent, but that she was not entitled to the moiety of the £4250, the sum being payable out of the rents, and there being in consequence of her claim before mentioned, no rents to pay it with (*k*).

2. Of Orders of the Court of Chancery respecting the property of Lunatics, not so found by inquisition, for their Maintenance.

The Court of Chancery has in some cases, where there is a fund belonging to lunatics under the control of the Court, and the income arising from it has been too small to bear the expense of a commission of lunacy, directed a reference to the Master to inquire into the state of mind of the party, and made orders for the application of such fund towards the maintenance of such persons, although not so found by inquisition. Although the powers of the Lord Chancellor in this respect have been considerably extended by the stat. 8 & 9 Vict. c. 100, ss. 94, 95, it seems proper to state the cases which had previously occurred, as that statute is confined to persons who shall have been received or taken charge of as lunatics, upon medical orders and certificates. Where it appeared by a petition that there were funds in Court belonging to the petitioner, who, since the death of her husband, had been, and then was, in an insane state of mind, and totally

(*k*) *Jones v. Bruce*, 11 Sim. 221; see *Carter v. Beard*, 10 Sim. 7.

incapable of managing herself or her affairs, although, on account of the small amount of her fortune, being the income for life of an Exchequer annuity of forty pounds, the dividends of 2,000*l.* Bank stock, and of 300*l.* East India stock, no commission of lunacy had issued—The Court referred it to the Master, to inquire what was the state of mind, and age, and condition in point of health of the petitioner, and whether she was in a capacity to take care of herself and her own affairs, and also by whom, and in what manner, she had been maintained, and what would be proper to be allowed for her support (*l*). And a similar reference was made in a previous case (*m*).

In a case where an application was made to have an allowance for the maintenance of a person of insane mind, the Lord Chancellor objected, because a commission of lunacy had not issued, and without it, he did not see how the executors or trustees could be justified; but being told that the expense of a commission and the consequent orders would be 120*l.*, and that the life income was no more than 79*l.* a-year, on the authority of the cases last cited, it was referred to the Master, to see what was proper to be done, and to inquire into the insanity of the party (*n*).

In another case, on a petition that a fund in Court belonging to the plaintiff, or the interest of it, might be paid to the plaintiff's wife, for the maintenance of him and his family, in consequence of his imbecile state of mind (not amounting to lunacy), and incapacity to do legal acts, and it appearing to be for the benefit of the family that the interest should be so paid, it was accordingly ordered to be paid from time to time (*o*).

In one case, the Court, on the production of affidavits as to the state of mind and amount of fortune of a party, ordered dividends to be applied for maintenance without a reference to the Master. In that case, the whole property of a lady in a weak state of mind, unable to manage her affairs, and who had

(*l*) *Price and Others v. Bedford and Another*, Reg. Book, 1784, p. 227.

(*m*) *Eldridge v. Croucher*, and Others, Reg. Book, 15th May, 1782.

(*n*) *Machin v. Salkeld*, 2 Dick. 634.

(*o*) *Bird v. Lefevre*, 4 Bro. C. C. 100.

been for some time under the protection of her maternal uncle, consisted of 1,700*l.* 3*l.* *per cent.* Consolidated Bank Annuities, and money to the amount of about 300*l.* which were bequeathed by wills and a codicil to trustees, in trust to place the same out at interest for the support and maintenance of the lady, as they should judge proper, so long as she should remain in her unhappy situation; but, if she should be restored to her health and former state of mind, to pay the principal to her. A bill had been filed by the uncle, as the next friend of the lady, against the person in whose name the stock was standing, praying a transfer of the stock and payment of the cash balance to the Accountant-General, to be laid out; and that the necessary directions might be given for her support and comfort; the defendant by his answer offered to transfer the stock and pay the balance as the Court should direct. No further proceedings were had in the cause till a petition was presented by the plaintiff, suggesting that the property was not sufficient to defray the expense of a commission of lunacy; and prayed that it might be referred to the Master to inquire and report what was the state of mind and condition in point of health of the petitioner, and whether she was in a capacity of taking care of herself and her affairs; also by whom and in what manner she had been and was maintained—what was her fortune—who was in the receipt thereof; and that the defendant might transfer the stock and pay the balance of cash to the Accountant-General in trust in the matter of the petitioner, or to the credit of the cause; and that after taxation and payment of the defendant's costs, the residue of the cash and all future dividends upon the stock, might be paid to the petitioner, the maternal uncle, from time to time, to be applied in the maintenance of his niece—Lord Chancellor *Loughborough* said, it was in effect a petition for a commission of lunacy, and he was afraid of establishing the precedent; but, on being informed that by great parsimony a commission cost 100*l.*, he said, he was doing an irregular thing, but might as well do it completely; and, therefore, upon producing affidavits of the state of the petitioner's mind, and the amount of her fortune, he would, without a reference, order payment of the dividends of the two next quarters, or a year; and then they

must apply again by short petition, as the Court must know her state of mind, and the amount of her fortune, from time to time. The order was drawn up for payment of the dividends of the two next quarters (*p*).

In a case where a commission of lunacy had issued against a lady, under which the jury found a verdict that she was not a lunatic, and was sufficient for the government of herself and her property; on a petition being presented against this verdict, from which the nature of the case appeared to be imbecility of mind in a great degree proceeding from epilepsy—Lord *Eldon*, C., observed, that every person about this lady was satisfied that some care should be thrown round her, and that it was fit to put a control upon those who might be proper persons to have the care of her property. His Lordship would not then subject her to another commission; but directed two physicians, who had not been consulted, to confer with those who had been consulted on a former occasion, to read the evidence, and afterwards to visit her for the purpose of determining whether her state of mind was competent to the management of her affairs; as it did not seem a case of insanity (*q*). An order was afterwards made for payment of the dividends of the Bank Annuities, from time to time as they became due, to the lady for her separate use, during her life, or until further order of the Court; and the lady or any other person or persons authorized by her, either by deed or will, executed by her in the presence of and attested by three or more credible witnesses, were to be at liberty to apply to the Lord Chancellor concerning the capital of the Bank Annuities, or any part thereof, as they should be advised, to the intent that such order might be made respecting the same as should be just and for the benefit of the lady, or any person or persons who should be entitled to the same Bank Annuities under her will so executed as aforesaid (*r*).

Where a defendant of unsound mind was entitled, under the

(*p*) *Eyre v. Wake*, 4 Ves. 795.

(*q*) *Ridgway v. Darwin*, 8 Ves.
65.

(*r*) *Ridgway v. Darwin* and

Others, Reg. Book, B. 1802, fol. 576; see 2 Ves. sen. 499, where it is said, that a similar order was made by Lord *Harcourt*.

decree of the Court of Chancery, to an annuity of 125*l.* it was ordered that the same should be carried over to the credit of the cause to his account, subject to further order, with liberty for him, or any one duly authorized on his behalf, to apply concerning the same as he should be advised (*s*).

The petition of the wife and children of a lunatic against whom no commission had issued, prayed that a half-yearly payment then due, and the future payments of an annuity of 100*l.* standing to the separate account of the lunatic in a cause, might be paid by the Accountant-General to the wife and son of the lunatic, and the survivor of them to be applied in the maintenance of the lunatic. The lunatic was in his seventieth year, and had no property besides the annuity, except an annual allowance of 70*l.* made to his family by the Royal Academy. The order for payment of the annuity was made, the wife and son undertaking to apply it for the lunatic's benefit; but the Court refused to direct that the son should receive the annuity in the event of the wife dying before the husband (*t*).

It seems that the separate estate of a married woman, in a state of incapacity, will not be ordered to be paid to her husband, if he is possessed of sufficient means for providing for her comfortable maintenance. A testator by will directed the share of his daughter, a married lady, in his residuary and real estates, to be held by trustees upon trust, to lay out the same in their own names, and to pay the dividends for the sole and separate use of his daughter during her life, independently of her husband. Various payments had been made into the name of the Accountant-General, on account of the lady's share in the property. At the date of the will, and for many years preceding, the lady had been, and still continued, of unsound mind, though no commission of lunacy had been taken out against her. She resided with her brother in Scotland, but was maintained by her husband; and their only child, a son, was at the University of Cambridge. The husband presented a petition, stating the circumstances that

(*s*) *Gallwey and Others v. Christie* (*t*) *Conduit v. Soane*, 5 My. & Others, Reg. Lib. A. 1830, Cr. 111.
fol. 1057.

he had not any fortune with his wife on his marriage; and that no settlement had been since made on her by him; and praying a reference to the Master, whether it would be for the benefit of the lady, regard being had to the circumstances of the petitioner, and the state of his family, that the whole or any part of the income arising from her share of the testator's estates, should be paid to the petitioner, or otherwise applied for her maintenance. Lord *Eldon*, C., observed, this is a case of great importance and delicacy. Upon the facts stated by this petition, the testator must be supposed to have been aware of the situation of this lady; and the terms of the will are in direct opposition to this application; and said, that he had searched, and could find no authority in the least governing him in a case of this nature. Without prejudice to the question, what might be done thereafter, an inquiry was directed how the lady had been maintained, and at whose expense, since the testator's death; whether her husband was of ability to maintain her, due regard being had to her comfort; and whether any of the separate maintenance should be applied for her use, to whom, and upon what securities. There is a distinction between the application of a stranger, and of the husband himself, able to maintain her, and not maintaining her as he ought, in which case his petition would be dismissed (*u*).

A married lady, who was entitled to an income of 500*l.* a-year out of the property, the subject of the suit being of unsound mind, the Court ordered the whole of the 500*l.* to be paid to her husband; but directed the arrears and future payments of an annuity of 100*l.* to which she was entitled for her separate use, to be carried to her separate account and accumulated, notwithstanding the husband deposed that the expenses incurred by him in her care and maintenance exceeded 500*l.* a-year. The means of the husband did not appear (*v*).

Part of the capital of a fund in Court, belonging to a married woman who was deranged, and had been deserted by her husband, who was in Jamaica, was ordered to be applied in

(*u*) *Brodie v. Barry*, 2 Ves. & Bea. 36; see *ante*, pp. 204, 205.

(*v*) *Nettleship v. Nettleship*, 10 Sim. 236.

discharging a debt due, for maintenance, to the proprietor of the asylum in which she was confined (*w*).

On a bill filed by the husband and wife for payment of a legacy of 20*l.* in the Long Annuities, bequeathed to the wife absolutely, the husband being of unsound mind, the Long Annuities were directed to be transferred to an account entitled "the husband and wife's account," and afterwards, in consideration of the poverty of the parties, the Court, on the petition of the wife, supported by affidavits as to the husband's insanity and the narrow and distressed circumstances of his family, ordered that the dividends to become due upon the Long Annuities should be paid to the wife on her sole receipt, or to her solicitor and next friend, he undertaking to pay the same to the wife (*x*).

An order was made, upon petition, for the sale of the reversionary interest in a fund in Court belonging to a person of unsound mind, there being no other fund out of which to provide for his past and future maintenance (*y*).

Where an application was made for an order to dispense with the attendance of barristers, there being none within twenty miles distance, on a commission of lunacy proposed to be executed in the country, the only object of which was, that proof might be made before the Master, under the usual decree upon a creditor's bill upon a bond for 300*l.*, which, with 80*l.* due for interest, was the only property of the party, a woman of too imbecile a mind to be capable of making proof herself—Lord *Eldon*, C., said, he might save the expense of a commission, which in such a case would be ruinous, by permitting the Master to receive any evidence that would be satisfactory to him, by analogy to the usual practice of taking the answer of a person of weak mind by guardian; and made an order in the cause, that the Master should be at liberty to receive any proof that should appear to him satisfactory, although no proof should be made by the party herself, or by any committee (*z*).

(*w*) *Peters v. Grote*, 7 Sim. 238. 8 Jur. 49; see 1 Russ. & M. 499;

(*x*) *Steed v. Calley*, 2 My. & K. 575, 577.

52. (*z*) *Herbert v. Matthews*. 19 Ves.

(*y*) *Walker v. Symons, re Walker*, 611.

Applications have occasionally been made to the Lord Chancellor, for the purpose of obtaining his order for directing the property belonging to lunatics, (not so found by inquisition), in the hands of third persons, to be applied for their benefit, where such lunatics have not been subject to the jurisdiction of the Court as parties to a suit, but it seems that the Chancellor has no jurisdiction to interfere in such cases (*a*).

In a case where it appeared by the petition, that a person of unsound mind, and unable to manage her affairs, but against whom no commission of lunacy had issued, was entitled, under a will, to a legacy of 200*l.* and an annuity of 50*l.*, and of 150*l.* due for arrears of such annuity, and that her next of kin were incompetent, from their situation in life and circumstances, to support her; that the sum necessary for her support was 40*l.* *per annum*; and that the expense of a commission of lunacy would so reduce her estate as not to leave sufficient for her comfortable maintenance—The petition presented by the acting executor under the will of the lunatic's father, prayed a reference to one of the Masters, to inquire into her state of mind, and whether she was of capacity to take care of herself and of her affairs, and the state and amount of her fortune, and that the care and custody of her person and estate might be granted to the petitioner; and that the arrears of the annuity, and the growing payments thereof, might be applied towards her maintenance. The next of kin consented to the application, and the executors of the will, under which the lunatic was entitled, submitted to any order which the Court might make—Lord *Lyndhurst*, C., stated, that what the petition called upon him to do was an irregularity; and that he would not add to the number of cases in which an irregularity had been committed; and he declined to make any order on the petition (*b*).

Petitions of a similar kind and having the same objects, were presented to Lord *Brougham*, C., who, after consideration, observed in giving judgment, that he had no jurisdiction to make the orders prayed, as the lunatics were not parties to

(*a*) See 11 Geo. 4 & 1 Wm. 4, c. 60, s. 5. *Ex parte Ridgway, In re Crompton*, 5 Russ. 152.

(*b*) *In re Scott*, 21 Dec. 1831;

any suit in Chancery; and that the circumstances disclosed by the petitions rendered his interference, if possible, very desirable; but, after having anxiously considered the cases on the subject, the result of his examination was, that he had no jurisdiction to make such orders as were prayed, in cases where no commission of lunacy had issued, and where the lunatics were not before the Court as parties to a suit. He expressed his opinion that the jurisdiction was established, and had been well exercised in the cases of lunatics who were before the Court as parties to suits; but that it had already been carried far enough, and that he would not extend it; and if the jurisdiction was defective, it could be remedied only by the Legislature (c).

3. *Of the protection, care, and management of the person and estate of Lunatics not found such by inquisition under statute 8 & 9 Vict. c. 100.*

Whenever the Commissioners in Lunacy shall have reason to suppose that the property of any person detained or taken charge of as a lunatic is not duly protected, or that the income thereof is not duly applied for his maintenance, such commissioners shall make such inquiries relative thereto as they shall think proper, and report thereon to the Lord Chancellor (d).

Masters in Lunacy may appoint guardians, and direct application of income of lunatics in confinement.—That when any person shall have been received or taken charge of as a lunatic upon an order and certificates, or an order and certificate in pursuance of the provisions of the act 8 & 9 Vict. c. 100, or of any act thereinbefore repealed (see sect. 1), and shall either have been detained as a lunatic for the twelve months then last past, or shall have been the subject of a report by the commissioners, in pursuance of the provision lastly thereinbefore contained (see sect. 94)—the Lord Chancellor may direct one of the said Masters in Lunacy personally to examine such person, and to take such evidence and call for such information as to such Master shall seem necessary, to satisfy him whether such person is a lunatic, and shall

(c) *In re Scott, In re Winton, In re Astley*, 21 Dec. 1832.

(d) 8 & 9 Vict. c. 100, s. 94.

report thereon to the Lord Chancellor, and such report shall be filed with the Secretary of lunatics. The Lord Chancellor, from time to time, may make orders for the appointment of a guardian or otherwise, for the protection, care, and management of the person of any person who shall by any such report be found to be a lunatic, and such guardian shall have the same powers and authorities as a committee of the person of a lunatic found by inquisition now has, and also may make orders for the appointment of a receiver or otherwise, for the protection, care, and management of the estate of such lunatic, and such receiver shall have the same powers and authorities as a receiver of the estate of a lunatic found such by inquisition now has, and also may make orders for the application of the income of such lunatic, or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such lunatic; and also as to the investment or other application for the purpose of accumulation of the overplus, if any, of such income, for the use of any such lunatic as to the Lord Chancellor shall from time to time in each case seem fit: Provided always, that such protection, care, and management, shall continue only during such time as such lunatic shall continue to be detained as a lunatic upon an order and certificates or certificate as aforesaid, and for such further time, not exceeding six months, as the Lord Chancellor may fix: Provided also, that the Lord Chancellor may in any such case, either before or after directing such inquiry by such Master as aforesaid, and whether such Master shall have made a report as aforesaid or not, direct a commission in the nature of a writ *de lunatico inquirendo*, to issue, to inquire of the lunacy of such person (e).

What powers may be exercised by Masters in Lunacy.—That such Masters shall have power in the prosecution of all inquiries and matters which may be referred to them as aforesaid or otherwise, under the act 8 & 9 Vict. c. 100, to summon persons before them, to administer oaths and take evidence, either *vivá voce* or on affidavit, and to require the production of books, papers, accounts, and documents; and that the Lord

(e) 8 & 9 Vict. c. 100, s. 95.

Chancellor may by any order (either general or particular) refer to the said Masters any inquiries under the provisions of that act, relating to the persons and estates of any lunatic, as to whom a report shall be made by a Master as aforesaid, in like manner as inquiries relating to the persons and estates of lunatics found such by inquisition are now referred to them (*f*).

The Lord Chancellor may from time to time make such orders as shall to him seem fit, for regulating the form and mode of proceeding before the Lord Chancellor and before the said Masters, and of any other proceedings pursuant to the provisions of that act for the due protection, care, and management, of the persons and estates of lunatics, as to whom such reports shall be made by the said Masters as aforesaid, and also for fixing, and altering, and discontinuing the fees to be received and taken in respect of such proceedings, as to the Lord Chancellor shall from time to time seem fit: Provided nevertheless, that all fees to be so received and taken, shall be paid into the Bank of England, and placed to the credit of the Accountant-General of the Court of Chancery, to the account intituled, "The Suitors' Fee Fund Account," in like manner as and together with the fees payable under the act 5 & 6 Vict. c. 84, and to be applied in like manner as such last mentioned fees (*g*).

Masters' expenses, how to be paid.—The travelling and other expenses of the said Masters and their clerks are to be paid to them, by any order of the Court of Chancery, out of "The Suitors' Fee Fund Account," in the same manner as their expenses under the said last mentioned act (*h*).

Orders made by the Lord Chancellor, under 8 & 9 Vict. c. 100.—By virtue of the above act, and for the purpose of making immediate provision for carrying the same into effect, Lord Lyndhurst, C., on the 1st Dec. 1845, made the following orders:—

"That every report made by either of the Masters in Lunacy, as to the lunacy of any person in pursuance of any direction

(*f*) 8 & 9 Vict. c. 100, s. 96.

(*h*) 8 & 9 Vict. c. 100, s. 98; *ante*,

(*g*) 8 & 9 Vict. c. 100, s. 97; *ante*, p. 103.

pp. 101-103.

given by the Lord Chancellor under the provisions of the above mentioned act of Parliament, be within one calendar month from the date thereof, filed by the clerk of the said Masters in Lunacy with the Secretary of lunatics, and be submitted to the Lord Chancellor for confirmation" (*i*).

When it is desired to obtain an order of reference, under the 8 & 9 Vict. c. 100, a petition should be presented to the Lord Chancellor, supported by affidavits, praying that one of the Masters in Lunacy may personally examine the party in confinement, whereupon an order for that purpose will be made, with a direction to report thereon to the Lord Chancellor (*k*). The Master having made the necessary inquiries, will then report upon the matter accordingly; a petition must then be presented for the confirmation of the Master's report, and if confirmed, the Master will proceed to make the necessary inquiries under the following orders:—

“ That when any such report, finding the person therein named to be a lunatic, shall have been so confirmed, either of the said Masters do from time to time, and without any special order in the matter, inquire and report who is or are the heir or heirs-at-law and next of kin of the lunatic, and the person or persons who would be entitled to his estate, or to shares thereof, under the statutes for the distribution of intestates' estates, in case he were at the date of such inquiry dead intestate, to whom due notice of attending the Master in Lunacy is to be given; and, also to inquire and report what is the situation of the lunatic, and the nature of the lunacy, and who is the most fit and proper person to be appointed the guardian of such lunatic,—and who is the most fit and proper person to be appointed receiver of the estate of such lunatic, and of what the fortune of the lunatic consists,—and what is the amount of income arising therefrom,—and in what manner, and at what expense, and by whom, and where the lunatic has been maintained,—and whether anything, and what is due, and to whom in respect of such past maintenance, and to whom, and out of what fund arising from income the same ought to be paid, and

(*i*) 1st Order, 1st Dec. 1845. (*k*) See form of petition in the Appendix.

what is fit and proper to be allowed for the maintenance and support of the lunatic for the time past and to come, regard being had to the circumstances and estate of the lunatic, and from what time such allowance should commence: Provided always, that either of the said Masters may, after such direction given by the Lord Chancellor, and before the confirmation of such report as aforesaid, if it shall to such Master seem expedient, commence and take evidence as to all or any of the aforesaid inquiries (*l*).

“ That either of the said Masters in Lunacy be at liberty after the confirmation of such report, under the said act as aforesaid, to receive any proposal, or conduct any inquiry as to the protection, care, and management of the person or estate of the person in such report found to be a lunatic, and may report thereon as to such Master shall seem fit; but every such report shall be submitted for confirmation, as is done with respect to reports when made on special reference (*m*).

“ That every receiver to be appointed under the provisions of the said act, or his legal personal representatives, as the case may be, do from time to time without any special order in the lunacy for that purpose, attend before one of the Masters in Lunacy, and have an account of his or their receipts, and payment for and on account of the lunatic, and his estate taken and passed, and that in taking and passing such accounts the Master in Lunacy make unto the receiver, or his legal personal representatives, as the case may be, all just allowances, including an allowance of his and their reasonable and proper costs, charges and expenses, and those of the next of kin of the lunatic, of passing such accounts. And that the general orders, rules, and regulations for the time being in force with respect to the accounts of committees and receivers of the estates of lunatics, found such by inquisition, and the balances thereon, shall, so far as the same may be applicable, be in force with respect to the accounts of receivers of the estates of lunatics under certificate, and the balances thereon (*n*).

“ That either of the Masters in Lunacy may from time to

(*l*) 2nd Order, 1st Dec. 1845.

(*n*) 4th Order, 1st Dec. 1845;

(*m*) 3rd Order, 1st Dec. 1845.

see *post*, p. 236.

time determine whether all, or how many and which of the next of kin, or of the heirs of any such lunatic as aforesaid shall, unless at their own costs, attend before the Masters in Lunacy on any proceedings in lunacy, and that no other of such parties shall be allowed costs out of the estates unless by special order for that purpose (*o*).

“ That either of the Masters in Lunacy be at liberty from time to time, and at the request of any party or otherwise, to make separate reports, or a separate report, and to state any circumstances as to the subject-matter of the report specially as he shall think fit (*p*).

“ That the protection, care, and management of the person and estate of every such lunatic as aforesaid, shall continue for six months after such person shall cease to be detained as a lunatic upon an order and certificates, or order and certificate, as the case may be, unless the Lord Chancellor shall in any case by order in the particular matter otherwise direct (*q*).

“ That until further order, the clerks to the Masters in Lunacy, and the Secretary of lunatics, take and receive for the business done under the said act, the like fees to those for the time being received and taken by them respectively for the like business, under or by virtue of the act of 5 & 6 Vict. c. 84, and that all fees so taken and received, be once in every month paid into the Bank of England, to the credit of the Accountant-General of the Court of Chancery, to the account entitled, ‘ The Suitors’ Fee Fund Account,’ together with, and as part of the fees payable under the said last-mentioned act, and be applied as part of such last-mentioned fees” (*r*).

(*o*) 5th Order, 1st Dec. 1845.

(*r*) 8th Order, 1st Dec. 1845;

(*p*) 6th Order, 1st Dec. 1845.

see *ante*, pp. 101—103.

(*q*) 7th Order, 1st Dec. 1845.



SECTION VII.

Of the Allowance for Trouble to the Committees of the Estates of Lunatics.

THE general rule of the Court of Chancery is, not to make any allowance to committees of lunatics for their trouble in the execution of their trust; but, under particular circumstances, the allowance for maintenance has been increased, or a reasonable compensation for trouble allowed.

The committee of the person and estate of a lunatic, being also his younger son, preferred a petition, to be allowed, in addition to 400*l.* a-year, a sum of money reported by the Master as proper to be allowed for his trouble in taking care of the lunatic's estates, which were large, and dispersed in England and Ireland. The next of kin consented to such allowance, as far as by law they could give such consent. Lord *Hardwicke*, C., observed, that trustees or committees of lunatics never have any allowance made to them for their trouble; committees were generally the relations, or at least friends, of the lunatic, and were supposed to have a regard for his welfare, and to undertake the care of him from charitable motives; and as an allowance had never been made, his Lordship refused to make a precedent for himself and his successors. The present case had less favourable circumstances than where a stranger was committee; for a son was in duty bound to undertake such a trust: nor was the consent of the next of kin (so far as they were by law capable of consenting) a sufficient ground for obtaining the allowance; for, it is the interest of the lunatic which the Court regards, and the lunatic might outlive the present next of kin, and his personal estate go into other hands after his death. The management of the property, however, in that case being attended with great trouble, his Lordship directed the committee to prefer a petition for an increase of maintenance,

taking no notice of the Master's report; and he would then order an additional allowance of 200*l.* a-year (a).

On a petition, presented in lunacy, for an allowance to the committee of the estate, for his care and trouble, Lord *Eldon*, C., is reported to have said, that he did not recollect an instance of allowing a committee of the estate any thing for his care and trouble; and refused to make an order for that purpose (b).

But, under peculiar circumstances, a salary is sometimes allowed to the committee of the estate of a lunatic. Thus, where a gentleman, unconnected with the family of the lunatic, had been induced at their request to suffer himself to be proposed as committee, in order to carry into effect the Lord Chancellor's recommendation; and the inspecting the estate, and receiving and remitting the rents, would be attended with considerable trouble; and the Master had approved the appointment. On a petition being presented by some of the next of kin, praying that the committee of the estate might have an allowance, in the same manner as a receiver—Lord *Eldon*, C., directed the Master to inquire and certify what reasonable allowance under the peculiar circumstances of the case it would be proper to make to the committee, for his care and pains in the management of the lunatic's estate, and in collecting and receiving the rents thereof, with liberty to state any special circumstances (c).

In another case, where a person had been appointed committee of the estate of a lunatic, but, in consequence of the large amount of the security required, and of the trouble which he must necessarily be put to in collecting the rents of the lunatic's houses, and the interest due upon bonds and mortgage securities, refused to act, unless he was also appointed receiver, with some remuneration for his trouble in attending to the affairs of the lunatic—Lord *Lyndhurst*, C.,

(a) *In re Annesley*, Ambl. 78.

(b) *Anon.* 10 Ves. 104; see *In re Earl of Lanesborough*, Lloyd & G. temp. Plunket, 503.

(c) *Ex parte Fermor*, *In re Errington*, Jac. Rep. 404; see *Marshall v. Holloway*, 2 Swanst. 432, 453; *ante*, p. 186.

on the petition of the sisters and co-heiresses of the lunatic, made a reference to the Master to settle a reasonable and proper salary, to be allowed to the committee of the estate, for his care in the management of the lunatic's estate, on his giving security, to be approved by the Master, to account annually for what he should receive and pay (*d*).

So likewise, where the estate of the lunatic consisted of lands in different parts of a county, which were divided into upwards of twenty farms, let on leases, which contained very special covenants, an order was made, without a reference to the Master, that the committee of the lunatic's estate should be at liberty to employ a particular person for inspecting the lunatic's property, at a fixed salary, to be paid out of the rents of the estate (*e*).

But in a case where the committee of the person of the lunatic petitioned for payment of an annual sum directed to be allowed to him for expenses incurred by him in visiting the lunatic; and it appeared that such committee had resided in Scotland from 1813 to 1821—Lord *Eldon*, C., said, if a sum was allowed the committee for the expenses of visiting the lunatic, and he retired out of the jurisdiction, where the Court could not compel him to do his duty, the Court would not order it to be paid to him. It must be paid to some one over whom the Court had control. If an application had been made, stating that he was gone to reside permanently in Scotland, the Court would have discontinued the allowance. The order made on the last petition declared that the committee was not entitled to the allowance of 40*l. per annum* claimed by him, and directed the Master to inquire, regard being had to any visits which he should find to have been actually made by the petitioner to the lunatic, at his place of residence, whether any, and what sum ought to be allowed him for such visits (*f*).

Where a lunatic's property consisted simply of public stock and monies due in respect of half pay, an allowance to the committee for receiving it was refused (*g*).

(*d*) *In re Palmer*, 15 March, 1828.

(*e*) *In re Errington*, 2 Russ. 567.

(*f*) *Ex parte Ord*, Jac. Rep. 94.

(*g*) *Powell v. Bonner, re Powell*,

9 Law J. 1840, Ch. 139.

Where a person, who had been appointed committee of the estate, stated in his petition that he had never consented to the appointment, that he declined to act as committee, and that no other person could be found to undertake the office; but that he was willing to accept the situation of receiver of the estate of the lunatic, on being allowed a proper salary—It was referred to the Master to approve of some other proper persons as committees; and if no proper person could be found to act as such committee, then the Master was to appoint a proper person to be the receiver of the lunatic's estate, with a reasonable salary for his care and pains, on his giving the same security as is required from the committees of lunatic's estates to account annually; and a further order was added, that the tenants of the lunatic's estates should attorn and pay their rents to such receiver, who was to be at liberty to let the estates from time to time, with the approbation of the Master, as there should be occasion (*h*).

The Masters in lunacy are to fix the times within which committees of lunatics are to deliver in and pass their accounts, and pay and lay out balances, and such committees making default are to be disallowed their salaries and charged with interest at £5 per cent (*i*).

SECTION VIII.

Of the Removal of Committees.

As the Sovereign is bound to execute the trust created by the statute *de prærogativâ regis* (*a*), and cannot do it otherwise than by persons appointed for that purpose, the Lord Chancellor is the proper person to direct and control the authority of the person so appointed; and it is the duty of the person holding the Great Seal to see that the committees do

(*h*) *In re Smith*, 23 Feb. 1828. 1844; see *post*, pp. 236, 237.

(*i*) Order in Lunacy, 15 April, (*a*) See *ante*, pp. 11, 12.

not use their trust to the prejudice of the lunatic in his lifetime, or of those entitled to his property after his death.

The committee of the estate is considered as a mere bailiff, appointed by the Crown, and under its control, to take care of the property, and to act according to the duty imposed on the Crown; and is liable to account, to censure, to punishment, and to removal, if he shall misconduct himself (*b*).

It has been stated, that the superintendence of the conduct of committees of lunatics in the management of their property and persons belongs to the Court of Chancery (*c*); but such jurisdiction is always exercised by the Keeper of the Great Seal, and not by the other branches of the Court.

In case committees abuse the powers with which they are intrusted in that character, or in case their circumstances become so embarrassed as to render it unsafe or inexpedient to intrust them any longer with the management of the lunatic or his concerns, they will either be removed or suspended from the office, as occasion may require, and orders will be made for the appointment of others in their place.

In a case in which a committee of the estate of a lunatic had neglected to carry in his accounts, and afterwards rendered very deficient ones, and had called in and received several sums of money belonging to the lunatic, keeping part of it in his own hands, and making a profit of it, and had lent other part of the lunatic's money on mortgage, and expended some in repairs, without the authority of the Court, besides retaining a balance in his own hands; such committee was ordered in the first instance to render an account of his receipts; and the Master, having found by his report that the committee had been guilty of such irregularities with respect to the management of the lunatic's funds; on a further petition being presented, an order was made for removing the committee from his office, and for directing another to be appointed in his place (*d*).

Where a lunatic was defendant in a cause, and his committee, who was also a defendant in the same cause, refused to put in an answer for him; on a motion by the plaintiff, for the com-

(*b*) 2 Sch. & Lef. 436.

Lef. 438; *ante*, pp. 18—20.

(*c*) *In re Fitzgerald*, 2 Sch. &

(*d*) *In re Pearson*, 15 Aug. 1826.

mittee to put in an answer by a limited time, or for one of the Six Clerks to be appointed guardian *ad litem*—The Court thought the proper course would be to proceed against the lunatic; and, if the committee declined putting in an answer, to apply to the Great Seal for the appointment of another committee (*e*).

The committee of a lunatic, who had been guilty of a contempt by publishing a pamphlet, which reflected on persons acting in the management of the lunatic under the Chancellor's orders, and who had moreover intruded into the Master's office, and interrupted the business there, was dismissed, and a reference was directed to the Master for the appointment of a new committee (*f*).

Bankruptcy of the committee of the person of a lunatic is a sufficient cause for removing him, on account of the fund for maintenance; but the custody of the person is not always changed on that account; but it will be referred to the Master to appoint another committee, in order that he may consider the particular circumstances of the case, and the propriety of continuing the custody, having regard to the comfort of the lunatic (*g*).

The Court will not remove a committee *of the person*, merely on the ground of his having become a bankrupt, whether he has obtained his certificate or not; even where he has obtained his certificate, and, possessing no other funds than those which are given for the maintenance of the lunatic, is under a temptation to appropriate them to his own benefit, still the Court will not change the custody of the person of the lunatic, unless it be impracticable otherwise to secure his maintenance. For, the Court in such cases has a species of control over the funds and the true subject of consideration is, whether such committee has done what is required for the comfort of the lunatic, which in many cases is best promoted by not changing the custody of his person. And, therefore, on a petition to remove a committee, on the ground that he had become a bankrupt, an

(*e*) *Lloyd v. Mar*, 2 Dick. 460;
see *post*, Ch. x. sect. ii.

(*g*) *Ex parte Mildmay*. 3 Ves.
jun. 2.

(*f*) *Ex parte Jones*, 13 Ves. 237.

inquiry was directed whether the comfort of the lunatic had been sufficiently provided for, regard being had to the sum allowed (*h*).

The bankruptcy of the committee of *the estate* of a lunatic is a sufficient ground for removal. Thus, in a case where such a committee had been declared a bankrupt, it was ordered that he should be discharged from the office, and from acting in any manner in the affairs of the lunatic, and that the bankrupt should pass his accounts before the Master, when his assignees were to be at liberty to attend, and the balance to be found due was ordered to be paid into Court, upon which his recognizance was to be vacated; and in default of such payment, it was referred to the Master to inquire and certify whether any proceedings should be taken against the bankrupt and his sureties, for obtaining payment of such balance; and the Master was directed to inquire who were the most proper persons to be appointed committees of the estate in the place of the bankrupt (*i*).

Sometimes, the bankrupt committee of the estate is suspended from the office until he shall have obtained his certificate. Thus, in a case where a committee of the estate of a lunatic had been made a bankrupt, and was indebted to the lunatic's estate in a large sum of money—Lord *Lyndhurst*, C., ordered the committee to be suspended from the committee-ship of the lunatic's estate, and from all interference therewith, until he should obtain his certificate, on receiving which he was to be at liberty to apply to resume such committee-ship; and the Master was ordered to appoint a proper person to be receiver of the lunatic's estate in the mean time, with a reasonable salary, on giving security; and it was ordered that the committee should proceed to complete the passing his accounts, and that the receiver should prosecute the orders made for passing such accounts; and it was referred to the Master to inquire if any and what proceedings were necessary and proper to be taken for recovering what was due to the

(*h*) *Ex parte Proctor*, 1 Swanst.

(*i*) *In re Barrow*, 20 June, 1827.

lunatic's estate from the committee (*k*). Afterwards, on the petition of two of the next of kin of the lunatic, the assignees of the bankrupt were ordered to deposit in the Master's office, upon oath, all such deeds, papers, and writings in their custody or power, as related exclusively to the estate of the lunatic, and to the accounts of the bankrupt as the committee of his estate. And the bankrupt was ordered to be examined upon interrogatories, as the Master should think fit, touching a particular farm, and the estate and interest of the lunatic therein, and the rents and profits thereof received by the bankrupt, and as to the accounts of the lunatic's estates generally; and the petitioners were to be at liberty to charge the bankrupt with such proportion of the rents and profits of such farm as the Master should find to be due from him to the estate of the lunatic in respect thereof, and in respect of certain other sums therein mentioned. And the Master was to be at liberty to fix a period within which the bankrupt was to vouch and pass his accounts before the Master; and, in default, the Master was directed to look into the state of the accounts and certify what balance appeared to be due from the bankrupt to the estate of the lunatic (*l*).

If it appears on the committee passing his accounts that his sureties are dead, or bankrupt, or insolvent, the Master in Lunacy is to fix a time for new security being given, and in case of default, the Master in Lunacy shall inquire and report who is the most fit and proper person to be appointed committee of the estate of the lunatic, in the place of the one making default (*m*).

The committee's going to reside permanently out of the jurisdiction of the Court seems to be a sufficient cause for removing him (*n*). But where only a temporary absence of the committee of the person and estate is contemplated, it may be referred to the Master to approve of a proper person to be intrusted with the care of the lunatic during such absence (*o*).

(*k*) *In re Chambers*, 15 April, 1826.

(*l*) *In re Chambers*, 13 Aug. 1828.

(*m*) Order, 15 April, 1844; see *ante*, p. 197.

(*n*) *Ex parte Ord*, Jac. Rep. 94.

(*o*) *In re Aguilar*, 22 Feb. 1823.

A party may apply to the Lord Chancellor, by petition, to be discharged from the office of committee; whereupon it will be referred to the Master to take and pass his accounts of the receipts and payments on account of the lunatic and his estate, from the foot of the last account; and an order will be made that, after payment of the taxed costs and reasonable allowances of the committee and next of kin of the lunatic, the balance to be found due from such committee be paid into the name of the Accountant-General of the Court of Chancery, and thereupon that the committee may be discharged from his committee-ship, and the recognizance entered into by him and his sureties cancelled; and it will also be referred to the Master to appoint another committee in the place of the one who has been discharged, of which notice must be given to the next of kin of the lunatic (*p*). And sometimes, on a petition for the appointment of new committees, it will be ordered that the custody of the person of the lunatic be committed to particular persons, until a new committee shall have been appointed, and directions will be given as to the custody of the lunatic in the interval (*q*).

SECTION IX.

Of Passing the Accounts of Committees.

THE committees of lunatics are required from time to time, to render an account of their receipts and payments in respect of the estate of the lunatic. The Lord Chancellor refers it to the Masters in Lunacy, to pass the accounts of committees, and by the former practice in lunacy on each particular occasion a specific order was required for the purpose.

But by the general order, it shall not be necessary for the committee or the legal personal representatives of the committee, to

(*p*) *In re Yorke*, 5 Aug. 1828.

(*q*) *In re Metcalfe*, 28 Aug. 1822.

obtain a special order in the matter, for the taking and passing from time to time his or their accounts, but such committee, or his legal personal representatives as the case may be, do from time to time, without any special order in the lunacy for that purpose, attend before the Master in Lunacy, and have an account of his or their receipts and payments for and on account of the lunatic and his estate taken and passed, and that in taking and passing such accounts, the Master make unto the committee or his legal personal representatives, as the case may be, all just allowances, including an allowance of his and their reasonable and proper costs, charges, and expenses, and those of the next of kin of the lunatic, of passing such accounts (a).

General order as to passing the Accounts of Committees and Receivers.—With the view to enforce the passing of the accounts of the committees and receivers of lunatics' estates, and the payment of balances due thereon; it is ordered, that the Masters in Lunacy shall, jointly or severally, from time to time fix the times within which all committees and receivers in the matters in their offices shall annually, or at such longer or shorter periods as may to such Masters or Master seem proper, procure their accounts to be delivered into the Masters' office, and that all committees and receivers shall, after their accounts shall have been delivered into the Masters' office as aforesaid, procure them to be proceeded on, examined, and settled at or within such times as the Masters may, jointly or severally, from time to time direct, and that the Masters shall jointly or severally also fix the times within which such committees and receivers shall pay the balances which shall appear due on passing such accounts, or such parts thereof as the Masters, jointly or severally, shall certify to be proper to be paid by such committees and receivers; and also when it shall to such Masters or Master seem proper, the times within which such committees and receivers shall cause to be laid out such balances, and any sum of dividends or cash at the Bank to which the lunatics respectively may be then entitled.

(a) Order in Lunacy, 27 Oct. 1842, No. 14.

And it is further ordered, that with respect to such committees and receivers as shall make default in any of the matters aforesaid, that the Masters shall, jointly or severally from time to time, if good cause be not shewn to such Master or Masters to the contrary, not only disallow the salaries (if any) claimed by such committees or receivers, or their representatives, but also charge them with interest, after the rate of *5l. per cent. per annum* upon any balances, dividends, or cash, during the time the same respectively shall appear to have improperly remained in hand, or uninvested as the case may be (*b*).

We have already seen that every committee and receiver, on each occasion of passing his accounts, is to satisfy the Masters in Lunacy that his sureties are living, and not declared bankrupt or insolvent; and where such sureties are dead or insolvent, a time shall be fixed for giving new security, and, in case of default, the Masters in Lunacy are without special order to report who are proper persons to be appointed committees or receivers in the place of those making such default (*c*).

The Masters of the Court of Chancery were ordered to certify on the last seal after Trinity Term, in every year to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, for the time being, the state of the several committees' and receivers' accounts, in their respective offices (*d*).

(*b*) Order in Lunacy, 15 April, 1844. By a general order of the Court of Chancery, it is directed that receivers shall annually pass their accounts and pay in their balances, or be disallowed their salaries, and be charged with interest upon the balance in their hands, at *5l. per cent. per annum*, during the time they shall have retained them, 23 April, 1796, Reg. Lib. B. 1795, fol. 381; 15 Ves. 278; and see Beames' Orders of the Court of Chancery, 454, 463.

But such order not having been observed, Lord *Eldon* desired that it might be enforced in future; *Potts v. Leighton*, 15 Ves. 274, 276.

(*c*) Order in Lunacy, 15 April, 1844; *ante* p. 197.

(*d*) Order of Lords Commissioners of the Great Seal, 25 July, 1792; Beames' Orders in Chancery, 453; and see Harr. Ch. Pr. by Newl. 386. By stat. 3 & 4 Wm. 4, c. 94, s. 17, it is enacted, "That each of the Masters in Ordinary of the High Court of Chancery shall,

In some cases, where the property of the lunatic is small, the Court will on application dispense with the general rule requiring the committees to pass their accounts annually. In one case, where the sum annually received by the committee beyond the maintenance did not exceed 8*l. per annum*, it was ordered that the same might, from time to time, when received by the committee, be paid into the Bank of England to the credit of the Master, (the amount to be verified by the affidavit of the committee;) and that the order directing the committee to pass his accounts annually be dispensed with (*e*).

On an application that the committee of a lunatic might have liberty to pass his accounts, which, in consequence (as was alleged) of the smallness of the property, had not been passed since the year 1823—Lord *Lyndhurst*, C., granted leave in that case; but said, that, whenever from any cause it is found inexpedient to pass the accounts of a lunatic's estate regularly, an application ought to be made, in the first instance, for liberty to dispense with the general rule, and the Court would then exercise its discretion on the subject (*f*).

In other cases, it has been referred to the Master to consider of the propriety of passing altogether the accounts of committees of the estates of lunatics for several years; and they have been

within the first four days of Michaelmas Term in each and every year, present, or cause to be presented, to the Lord Chancellor, a report in writing, under the hand of such Master, stating the days on which he shall have attended at his office for and during twelve months preceding such return, in the performance of his duty, specifying the number of hours occupied in each of such days' attendance as aforesaid; and further, that each such Master shall annex to such his report a list or schedule, to be signed by him in like manner, of the several causes, petitions, or matters of every description then pending in his office, shewing the

then state and stage of the same respectively, designating each cause, petition, or matter by the name or names of the party or parties thereto, or some of them, with the name or names of each solicitor engaged therein; and thereupon it shall be lawful for the said Lord Chancellor to make and issue such order for filing or depositing, and otherwise giving publicity and access to such list or schedule, as he in his discretion shall think fit."

(*e*) *Ex parte Pickard*, 3 Ves. & Bea. 127; *In re Stephenson*, Aug. 1814.

(*f*) *Anon.* 1 Russ. & Mylne, 113.

ordered to be passed accordingly, if the Master approve of such a course (*g*).

In another case, where it appeared that the property of the lunatic consisted only of 771*l.* 7*s.*, 3*l.* *per cent.* Bank Annuities, and 889*l.*, 3½ *per cent.* Bank Annuities; and that the expense of passing the accounts annually before the Master amounted to the sum of 16*l.*; and that it would be for the benefit of the lunatic, if the whole dividends of his stock were allowed for his maintenance—On the petition of the committee of the person and estate of the lunatic, it was ordered that so much of a former order, as directed the accounts to be passed annually, should be dispensed with, and that the whole of the annual dividends of the stock belonging to the lunatic should be paid to the committee from time to time, as the same became payable, for the maintenance of the lunatic until further order (*h*).

The committee will not, in general, be suffered to pass his accounts without referring it to the Master, to see what balances of money belonging to the lunatic have been retained in his hands from time to time; which he will not be allowed to keep without paying interest (*i*), nor to take upon himself the management of the savings of the estate, without being charged with interest (*k*).

According to the practice before the new orders, the Master was sometimes directed to make annual rests, for the purpose of calculating the interest on balances. Thus, it was referred to the Master, to take the accounts of the receipts and payments of the committee of the person and estate, and in taking the accounts, of receipts and payments to make annual rests, and to calculate interest after the rate of 4*l.* *per cent. per annum*, on any balances which he might find due from the committee. The personal representative of a deceased committee was, in like manner, ordered to account and pay interest after the same rate, for balances (*l*). The committees will be ordered to pay such

(*g*) *In re Robinson*, 28 Nov. 1828; 156.
In re James, 3 April, 1828.

(*k*) *Ex parte Chumley*, Ibid.

(*h*) *In re Scarpelain*, 22 May, 1830.

(*l*) *In re Lewis*, 5 April, 1813;
In re Middleton, 14 Aug. 1826.

(*i*) *Ex parte Cotton*, 1 Ves. jun.

balances and interest into the Bank of England in the name of the Accountant-General of the Court of Chancery (*m*). In one case, it was ordered that a committee should, within a month from the service of the order, pay into the Bank the balance found due from him by the Master's report, and in default of such payment, stand committed to the Fleet for contempt (*n*).

Although, as a general rule, where the accounts of committees have not been passed for several years, and balances have been retained in their hands, they will be charged with interest; yet it is competent for them to shew by satisfactory evidence any circumstances which the Court may deem sufficient to excuse them from the payment of interest (*o*).

Receivers being bound by recognizance to account regularly, or when called on, are considered as officers of the Court, and are obliged to account on application by petition or motion (*p*); and proceedings may be taken against them personally by commitment, for disobeying the order of the Court (*q*).

A receiver, though he passes his accounts, and pays his balances regularly, is not entitled to make interest for his own benefit of monies which came into his hands in his character of receiver, during the intervals between the times of passing his accounts (*r*).

A committee of the estate is sometimes ordered by the Court to be examined by the Master upon interrogatories, touching his management of the lunatic's estate, and the application of the rents and profits thereof (*s*).

Parties in contempt for not putting in their examinations are, in some cases, on application to the Court, allowed further time for that purpose, on payment of the costs of such contempt (*t*).

By the orders formerly made by the Lord Chancellor for passing the accounts of a lunatic's estate from time to time, notice of passing them was invariably directed to be given to

(*m*) *In re Pitt*, 30 March, 1820.

(*n*) *In re Owen*, 5 Aug. 1812.

(*o*) *Ex parte Hall*, Jac. Rep. 160.

(*p*) Mos. C. C. 40; *In re Burke*,
1 Ball & Beatty, 74; see 2 Eq.
Cas. Abr. ch. 87.

(*q*) *Davies v. Calcroft*, 14 Ves.
143; Mos. C. C. 43; see *ante*,
pp. 189, 190.

(*r*) *Shaw v. Rhodes*, 2 Russ. 539.

(*s*) *In re Lloyd*, 19 June, 1794.

(*t*) *In re Leith*, 10 Aug. 1813.

such persons as would be entitled to distributive shares of the personal property, in case the *non compos* were dead intestate. The persons answering this description were ascertained upon inquiry by the Master.

Such notice is given to the next of kin, and they are allowed to go before the Master, not so much by virtue of any right under which they can claim to be entitled in respect of their contingent possibilities, as for the purpose of checking the accounts, and to assist the Court in watching over the interests of the lunatic (*t*).

The Master in Lunacy may from time to time, determine whether all, or how many, and which of the next of kin or of the heirs of the lunatic, shall (unless at their own costs) attend before him on any proceedings in the lunacy, and that no other of such parties shall be allowed costs out of the estate, unless by special order for that purpose (*u*).

It is stated that the regulation under this order has at present been almost entirely confined to the attendance on committees' accounts, and that the Masters generally so arrange, that there shall only be one solicitor appearing for the next of kin, in addition to the solicitor for the committee, on passing his accounts (*v*).

It was held formerly, that, although notice of passing the accounts was given, yet that the next of kin were not allowed the costs of attendance, unless some special case was laid before the Court, as that they were at the expense on some extraordinary litigation with respect to the accounts; otherwise, if every relation, who thought he had an interest to attend, should have the costs, it would bring a great burthen on the lunatic's estate (*w*). It is considered, however, so much for the benefit of the *non compos*, that the accounts of the committee should be watched by persons interested in their accuracy, that the costs of the next of kin are now generally allowed as a matter

(*t*) *Ex parte Wright*, 2 Ves. sen. 25; *Tharp v. Tharp*, 3 Mer. 512; *Ex parte Clarke*, Jac. Rep. 595; see 19 Ves. 123; *In re Pearson*, 1 C. P. Cooper, R. 317.

(*u*) Orders in Lunacy, 27 Oct. 1842, No. 15.

(*v*) *Elmer*, 40, 41.

(*w*) *Ex parte Wright*, 2 Ves. sen. 25.

of course. So also the costs of the heir-at-law and next of kin in attending the Master to propose committees; and this, upon a like principle of advantage to the *non compos* (x).

But the Court, in one case, refused to allow one of the next of kin, being an annuitant and defendant in a suit for the administration of an estate, in the residue whereof the lunatic was principally interested, the costs of attending before the Master and passing such accounts; as the decree for taking the accounts did not direct such attendance.

In that case, a suit had been instituted against executors and trustees, for the purpose of taking the accounts of an estate, in which a person, who had become lunatic after the commencement of the suit, was principally interested; and one of the defendants, who was made a party to the suit in respect of an annuity charged on such estate, was not allowed to attend at the passing of the accounts of the general estate at the costs of the lunatic, nor to be paid the costs of past attendances as one of the next of kin of the lunatic: as the decree for taking such accounts contained no direction for such attendance (y).

A committee, who shall neglect to pass his accounts regularly, will not be allowed his costs. Where a committee of a lunatic had passed his accounts not regularly, but the accounts of several years together, applied for costs, Lord *Thurlow*, C., declared, that the negligence of a committee in not passing his accounts as he ought was alone a sufficient reason for always refusing him costs (z).

In a case where the committee of a lunatic came to pass his account, and it appeared that a demand which he had in his private capacity against the estate of the lunatic was barred by the statute of limitations, Lord *Eldon* compelled him to take the same advantage for the lunatic against his committee, as would have been taken against a stranger; and the particular sum was disallowed (a).

In case the sureties die, and the committee become bank-

(x) 1 Coll. on Lun. 308.

(y) *Tharp v. Tharp*, 3 Mer. 510.

(z) *Ex parte Clarke*, 1 Ves. jun. 296.

(a) *Per Sir A. Hart*, C., in *Congreve v. Power*, 1 Molloy's Cases in Ireland tempore Hart, 122; see *Fergus v. Gore*, 1 Sch. & Lef. 107.

rupt, notice of passing his accounts must be given to his assignees; what he owed before his bankruptcy may be proved under the commission; and he will be ordered to pay the committee appointed in his stead what shall be found due from him subsequently to that event (*b*).

If the sureties of a bankrupt committee, or either of them, be living, they will be entitled to notice of passing his accounts, because they are liable to the payment of what shall be found due from his estate.

If default be made by the committee in passing his accounts, or in paying the balance into Court when required, the recognizance may be enforced against him and his sureties. On the death of a surety, the accounts ought to be passed, and the balance paid into Court. And on the death of the committee, his executors or administrators ought to pass his accounts, and pay what shall be found due from him out of his estate. On the death of the *non compos*, the accounts of the committee ought to be passed, and the balance paid to his representatives, or into Court (*c*). On the recovery of the lunatic, and the superseding of the commission, the committee ought to pass his accounts, and pay the balance to the party restored (*d*).

A solicitor employed by a committee on behalf of a lunatic cannot maintain an action against the lunatic for his bill of costs, but has a lien on the lunatic's estate for the amount of such bill. A solicitor acting on behalf of a lunatic preferred a petition, stating, that he had expended great sums of money in prosecuting suits at law and in equity, for the lunatic; and praying that he might be at liberty to enter up judgment, with stay of execution against the lunatic for obtaining a lien on his real estate. Lord *Hardwicke* decided, that the solicitor could not maintain an action against the lunatic; but that it must be brought against the committee who employed him. A solicitor who prosecutes to a decree has a lien on the estate recovered in the hands of the person recovering, for the amount of his bills; but if his client die, he has no such lien on the estate in

(*b*) *In re Lacy*, Aug. 1806.

(*d*) *In re Leyard*, Aug. 1810.

(*c*) 1 Coll. on Lun. 309.

the hands of the heir, unless it be necessary to have the suit revived, and then the lien will revive too. As the committee in that case had a lien on the lunatic's estate, the Court assisted the solicitor, and declared that he should stand in the place of the committee, in respect of such lien (*e*).

In another case, a petition was preferred by a solicitor for payment of his bill of costs, in taking out a commission of lunacy, out of the lunatic's estate; and that he might not be obliged to come under a commission of bankrupt against the prosecutor of the commission of lunacy who had employed him. Lord *Hardwicke*, C., said, that the solicitors were allowed the equity of having satisfaction for their expenses out of the fund, both in a suit, or in a prosecution in lunacy, or bankruptcy (*f*).

A solicitor, who had been employed in a case of lunacy, and had taken all the affidavits before himself, was ordered to pay the costs of his own petition, which was dismissed on account of such irregularity (*g*).

It seems, that the change in the state of mind of a party, subsequently to the first commission, by his becoming the object of a new commission, does not give any authority to the Court to order payment of the costs of a former commission (*h*). By statute 11 Geo. 4, and 1 Wm. 4, c. 65, s. 28, the Lord Chancellor may order the estates of lunatics to be sold, or charged by mortgage, for raising money for payment of the costs of applying for, and obtaining a commission of lunacy, and in opposition thereto, and all proceedings under the commission (*i*).

The orders made by the Court for payment of costs out of the funds belonging lunatics, invariably contain directions that such costs shall be previously taxed by the Taxing Master to whom the matter is referred (*k*).

(*e*) *Barnsley v. Powell*, 1 Ambl. 102. As to the right to revive a suit on account of costs, see *Lowten v. The Mayor of Colchester*, 2 Mer. 113, and the cases there cited; stat. 3 & 4 Wm. 4, c. 104, *post*, ch. viii. s. 2.

(*f*) *Ex parte Price*, 2 Ves. sen. 407.

(*g*) *In re Hogan*, 3 Atk. 813.

(*h*) *Sherwood v. Sanderson*, 19 Ves. 288; see *ante*, pp. 133, 134.

(*i*) See *post*, Chap. viii. s. 2.

(*k*) See Orders in the Appendix.

Until recently all references for the taxation of costs were made to the Masters in Ordinary, who used to be attended for that purpose by the Clerks in Court of all parties. Upon the abolition of the office of the Six Clerks, new officers called Taxing Masters were appointed for this particular duty, and by the 9th order of October, 1842, they are directed to perform all the duties before that time performed by the Masters in Ordinary, in relation to the taxation of costs, and the powers and authorities requisite for that purpose, are by the same order conferred upon them.

All references for the taxation of costs shall be made to the Taxing Master in rotation; or if there has been any former taxation of costs in the same cause or matter, then to the Taxing Master before whom such former taxation has taken place, either on a reference from the Court, or upon the request of a Master in Ordinary (*l*).

Attornies and solicitors are not to commence an action for fees until one month after delivery of their bills; and upon the application of the party chargeable by such bill within such month, in case the business contained in such bill, or any part thereof, shall have been transacted in Chancery, or in any matter of lunacy, such bill may be referred for taxation (*m*).

Application should be made to the Lord Chancellor, in preference to a Court of law, for a reference for taxation of the bill of costs in suing out and prosecuting a commission of lunacy and other proceedings ineffectually instituted by the defendant, in order to establish the lunacy of a third party (*n*).

Where an attorney attended a commission of lunacy for the petitioner, gave an undertaking in writing to the undersheriff for payment of the fees due to him, the commissioners and the jury, on the inquisition being returned, but failed to do so on the return and on request, the Court of Queen's Bench granted a rule calling upon him to pay such fees, on the ground, that when his undertaking was accepted, credit was given to him in

(*l*) 10 Order, 26 Oct. 1842; see also the 12 of same Orders, and 124 Order of May, 1845; Daniell's Ch. Pr. 1317. 1330, 2nd ed.

(*m*) 6 & 7 Vict. c. 73, s. 37.

(*n*) *Jones v. Bywater*, 2 Tyrw. 402; 2 Cr. & Jer. 371; 1 Dowl. 557.

his professional character. And it was held no objection to such rule that the proceedings in respect of which the obligation was incurred took place in another Court (*o*).

The petitioner having sued out a commission of lunacy at his own expense against a party, under which he was found to be a lunatic, and the party having died before a grant had been made of his estate, the Lord Chancellor refused to refer the bill of costs for taxation, or to make an order that the costs and expenses of the petitioner had been properly incurred for the benefit of the lunatic (*p*).

SECTION X.

Of the Powers and Duties of the Committees of the Estate.

MANY of the duties of the committee of the estate of lunatics are enumerated in the bond executed by him, for by that he is bound to render an account of the lunatic's property—to observe the orders of the Lord Chancellor—to see that the houses are kept in sufficient repair—to preserve the title deeds of the lunatic's estates—and to provide for the person of the lunatic, and for his safety, and for his family, if any (*a*).

The allowance made for the maintenance of the lunatic is to be paid by him to the committee of the person, unless other provision is made for that purpose by the Lord Chancellor—He is to receive the rents and profits of the estates, making proper allowances on account thereof, and keeping regular accounts of such receipts and payments. The accounts of the lunatics' estates are to be passed by the committee of the estate according to the prescribed orders, the balances found due from him

(*o*) *Ex parte Bodenham*, *In re Jephson*, 8 Ad. & El. 959; see *In re Aitkin*, 4 B. & Ald. 47; *In re Marris*, 2 Ad. & El. 582; *In re Knight*, 1 Bing. 91; *Evans v. Dun-*

combe, 1 Cr. & J. 372; 1 Tyr. 283; *In re Greaves*, 1 Cr. & J. 374, n. (*a*).

(*p*) *In re Pinks*, Law J. 1842, Ch. 57; see *ante*, p. 160.

(*a*) See form of Bond, *post*.

paid into Court, and invested or otherwise applied as the Lord Chancellor shall direct.

It is the duty of the committee of the estate to pay the percentage under stat. 3 & 4 Wm. 4, c. 36, on the income of the lunatic, into the Bank of England, in the name of the Accountant General of the Court of Chancery, to the account of the Board of Visitors of Lunatics (*b*).

The power of committees to contract on behalf of the persons under their charge, is not recognised by the common law of England.

The committee of a lunatic's estate has, under the authority of the Lord Chancellor, the management of his property, but cannot enter into any contract which shall be regarded as binding upon the person intrusted to his care, unless the same is warranted by some act of Parliament; and even, in such cases, the previous direction of the Lord Chancellor is generally required.

It may be laid down as a general rule, that all deeds, contracts, and transactions, by the committee of the estate of a lunatic, respecting the management or disposition of the property of the latter, which are not necessarily incident to the situation of a committee, or authorized by the express provisions of an act of Parliament, will not bind the lunatic or his estate, unless the previous order of the Lord Chancellor has been obtained; and that, with a view to the security of a committee, it is not a prudent or safe course for him to enter into any contracts, or to adopt any proceedings out of the usual course respecting the property or the rights of the lunatic, without the sanction of the Lord Chancellor.

The powers of the committees of the estates under the direction of the Lord Chancellor, to sell, convey, and lease estates vested in them, either beneficially or as trustees for other persons, will be considered in a subsequent part of this work (*c*).

Wherever the lord or tenant of a manor, or any person interested in any question or right connected with any com-

(*b*) See the act, *post*.

(*c*) See *post*, Chap. viii.

mutation or enfranchisement, under the act 4 & 5 Vict. c. 35, shall be an idiot, lunatic, or under any other legal disability, the committee of the estate, or in default thereof, or in case the party interested shall be unknown or not ascertained, then such person as may be nominated for that purpose by the copyhold commissioners, under their hands and seals, after due inquiry shall have been made by them as to the fitness of such person, shall for the purposes of that act be substituted in the place of such lord, tenant, or other person (*d*).

When either the lord of the manor, or tenants, are under disabilities, or when they have only a limited estate, such as an estate for life, &c., then it becomes the duty of the copyhold commissioners to protect the interest of other parties who are, or may thereafter be, interested in the property (*e*).

Where the lord of a manor shall be under any legal disability, all monies to be paid under the act for enfranchisement from the lord's right, amounting to or exceeding 200*l.*, are subject to any allowance which may be made thereout, in respect of deferred payments, under the 62nd section, to be paid with all convenient speed into the Bank of England, in the name of the Accountant-General of the Court of Chancery, to be placed to his account there, *ex parte* "the copyhold commissioners," pursuant to the act 1 Geo. 4, c. 35 (*f*).

The money when paid in is subject to the order of the Court of Chancery, made in a summary way, upon petition (*g*).

Such money being less than 200*l.*, and exceeding 20*l.*, may at the option of the parties entitled to the manor, or of the committees, in case of idiocy or lunacy, be paid into the Bank of England, or, at the like option, may be paid to two trustees nominated by the parties exercising the option; the money paid to trustees is to be applicable in the same manner as is directed with respect to money paid into the Bank of England (*h*). Such money, not exceeding 20*l.*, in case of idiocy

(*d*) 4 & 5 Vict. c. 35, s. 11.

5 Vict. c. 5, s. 13.

(*e*) See 4 & 5 Vict. c. 35, s. 56.

(*g*) *Ib.*

(*f*) 4 & 5 Vict. c. 35, s. 73;

(*h*) 4 & 5 Vict. c. 35, s. 74.

or lunacy, or other incapacity, is to be paid to the committees, and the copyhold commissioners may decide any question as to the proper application of the money (*i*).

By the Lands' Clauses Consolidation Act, 1845, the power of selling and conveying lands to companies, authorized by special act to execute certain works, may be exercised by the committees of lunatics and idiots, on behalf of whom they are the committees respectively, to the same extent as such lunatics or idiots could have exercised the same power under the authority of that act, or the special act, if they had respectively been under no disability (*k*).

The amount of compensation to be paid for any lands to be purchased or taken from any party under any disability is to be ascertained by valuation, and paid into the Bank of England, where the monies are payable in respect of lands there, or into the Bank of Ireland, where the monies are payable in respect of lands in Ireland (*l*). Provision is also made for the application of such monies (*m*).

By the act to amend the laws relating to sewers, Commissioners of Sewers are authorized to contract with the owners of, and persons interested in, any real estate within the jurisdiction of Commissioners of Sewers, for the purchase thereof, and for the loss which such owners or persons may sustain, and contracts and conveyances may be made for the above purpose, by (amongst others) trustees and all other persons on behalf of their *cestui que* trusts, lunatics and idiots, trustees and committees are indemnified for acts done in pursuance of that act (*n*).

The committee of a lunatic, seised in possession in fee simple, in fee tail, or for his own life, or for years determinable on his own life, (such estate for life or years not being subject to any rent), or for any term of years in gross, whereof not less than 400 years shall be unexpired, and subject to no equity of

(*i*) 4 & 5 Vict. c. 35, s. 75.

(*l*) 8 & 9 Vict. c. 18, ss. 9, 3.

(*k*) 8 & 9 Vict. c. 18, ss. 7, 8.

(*m*) *Ib.* ss. 69—72; see *Shelford*

There is a restriction as to the purchase of land for extraordinary purposes. *Ib.* s. 14.

on Railways, 202, 204, 265, 268, 2nd ed.

(*n*) 3 & 4 Wm. 4, c. 22, s. 24.

redemption or rent, except a nominal rent, may sell or exchange any buildings, lands, or other hereditaments, for the purposes of the act, making provision for lunatic asylums for counties and boroughs (*o*).

Generally speaking, it is proper for the committee of the estate to apply to the Court for its direction, previously to commencing or defending an action or suit by or against the lunatic (*p*).

The committee is considered as a mere bailiff appointed by the Crown, and under its control, to take care of the property, and has no interest in the land of the lunatic (*q*). And it is laid down by Sir *E. Coke*, that the committee of a lunatic, whether acting under the authority of the Crown or not, has no further or other power than that of a bailiff (*r*). And, therefore, it should seem, that he has no further power of distraining for rents in arrear due to the lunatics, than that possessed by receivers (*s*). It does not, however, appear to have been the practice in lunacy, to obtain an order for leave to distrain for rents due to the lunatic's estate, even where the rent has been in arrear for more than a year.

Where the title deeds of a lunatic's estate have been deposited in the Master's office, the Court will not direct them to be delivered out of Court to the committee of the estate, except upon an affidavit stating circumstances shewing it to be necessary to the proper administration of the estate that they should be placed in the custody of the committee (*t*).

The committee of the estate of a lunatic has not authority, without the order of the Court, to make any abatement in the rents of the tenants of his estate; but it must be referred to the Master, on the petition of the committee of the estate, to inquire and certify whether it will be proper that any, or what allowance should be made to the tenant in respect of the rent

(*o*) 8 & 9 Vict. c. 126, s. 20; see Appendix.

(*p*) See *post*, Chap. ix. x.

(*q*) *In re Fitzgerald*, 2 Sch. & Lef. 437; *Drury v. Fitch*, Hutton. 16; *Knipe v. Palmer*, 2 Wils. 130.

(*r*) 4 Rep. 127, b.

(*s*) See *ante*, p. 189, and *post*, Ch. viii. s. 1. But see *Bradby* on Distresses, by Serjt. *Adams*, p. 62.

(*t*) *In re Cooper*, 1 My. & Cr. 33.

reserved by a particular lease or agreement, and for what period such allowance should be made (*u*). Lord *Eldon*, C., adopted the general rule of not granting such a reference on the petition of the *tenant* of the lunatic's estate, and always required the application to be made on the petition of the committee of his estate (*v*); and this rule, it is said, has been uniformly followed by Lord *Brougham*, C., who, on several occasions, has dismissed petitions for the reduction of rents, because they were presented by tenants (*w*). Lord *Eldon*, C., is reported to have said, that, in all such references, the Master should be directed to inquire whether it would be more for the benefit of the lunatic's estate that the tenant should give up his lease, than that his rent should be reduced (*x*); but it does not appear that such a direction is usual.

On the confirmation of the Master's report recommending a reduction of rents, it will be ordered that the committee of the estate be at liberty to make the abatements in the rents of the tenants specified in the report, and that the committees be allowed such abatements in passing their accounts (*y*).

An abatement in the rent paid by the tenant of a lunatic's estate, was directed, without the expense of a reference to the Master, where the application was supported by a strong affidavit of the committee, in which he stated, that, in his judgment, the abatement was reasonable and necessary; that similar abatements had been very generally made to the farmers in that part of the country; and that the particular tenant had, from the pressure of the times, got into arrear, but was highly respectable; and as the evidence then before the Court was exactly the same as would be tendered in the Master's office, and the whole sum to be abated was only 60*l.* (*z*).

According to Sir *E. Coke* (*a*), the committee had formerly no power to cut timber on the lunatic's estate, except for repairs;

(*u*) *In re Potter*, 24 Dec. 1828.
See form of such petition in the Appendix.

(*v*) *Ex parte Town*, *In re Alchin*,
1 Turn. & R. Rep. 137.

(*w*) 1 Russ. & Mylne, 355, n.

(*x*) *Ex parte West*, Turn. & R.
Rep. 137, n.

(*y*) *In re Drax*, 25 Jan. 1828.

(*z*) *In re Fitch*, 1 Russ. & Mylne,
354.

(*a*) 4 Rep. 127, b.

but it has been held for a length of time, that the committee of the estate, under the direction of the Lord Chancellor, may exercise the same power in felling timber as the lunatic himself might have done if in his senses (*b*). It is frequently referred to the Master to inquire and certify what estate or interest the lunatic has in particular estates; and, having regard thereto, whether it will be proper, and for the benefit of the lunatic and his estate, that any timber should be fallen on his estates; notice of attending before the Master on such an inquiry must be given to the heir-at-law and next of kin of the lunatic. If the Master finds, by his report, that it is proper to fell any timber, after confirmation of such report, a further order will be made authorizing the committee to fell the timber certified by the Master's report as proper to be cut (*c*).

In cases, where the timber upon the estate makes part of the general rental, it is the duty of the administrator to continue the usual management of the estate, and that which is suited to its circumstances. In case of lunacy happening to the owner of an estate with woods of full grown timber, it was said by the Court, that it would be a breach of duty in those who have the administration of it, not to manage it in the same manner in which it had been managed before, and as the owner would if capable (*d*). Underwood is always considered as a crop, and may be cut in the usual course as much as a crop of corn (*e*).

If an act of Parliament, by general words, purports to confer a power upon several donees, one of whom possesses the same power more amply at common law, as incident to his estate, the statute shall not be intended to apply to him, so as by implication to abridge his power; and therefore his acts, which the statute would have authorized, will be referred to his common law right.

Thus, where estates had been conveyed to tenants for life, with remainder to their first and other sons successively in tail male, with divers remainders over, and, during the life of the

(*b*) *Ex parte Bromfield*, 1 Ves. jun. 461; see *ante*, p 13.

(*c*) See 13th Order, 27 October, 1842.

(*d*) *Oxenden v. Lord Compton*, 2 Ves. jun. 71; see *ante*, p. 13.

(*e*) *Humphreys v. Harrison*, 1 Jac. & W. 582.

tenants for life, a private act had been obtained, which empowered trustees therein named, and the survivor of them, with the *consent of the person for the time being in possession* or entitled to the rents of the settled estates, under the limitations of the settlement, to cut the timber proper to be felled; and the money produced by the sale of such timber was directed to be laid out in the purchase of other lands to be settled to the same uses. The first tenant in tail who became entitled under the settlement, was a lunatic, and, during his lunacy, timber was cut and sold by the authority of the committee of his estate, who was also a trustee under the act of Parliament, and the produce, to the amount of 11,000*l.* was paid into Court. The next of kin of the lunatic applied that this sum might be paid over to the lunatic's general personal account; while the heir-at-law, on the other hand contended that the timber had been cut under the powers conferred by the act, and therefore that the produce of it should be declared to be real estate, or be invested in the purchase of such estate. The Lord Chancellor held, that the act was intended to apply only to the tenants for life under the settlement; to construe the act otherwise, would be to carry it beyond the purpose obviously in view; for it never could be meant, there being no negative, but merely permissive words, to abridge the common law right of the tenant in tail. The produce of the timber, therefore, was to be taken as personal estate (*f*).

A committee has been ordered to work mines on the lunatic's estate. Upon a petition in lunacy, it appeared that the lunatic was tenant for life without impeachment of waste; remainder to his first and other sons in tail; with various remainders over. The lunatic was unmarried. Coal was found upon the estate, but in too small a quantity to justify making a shaft; but it was capable of being worked by means of a shaft in the adjoining land. Part of the estate of the lunatic was in mortgage; and the mortgagee was in possession; which reduced the income of the lunatic considerably. There were also other debts without any fund to answer them. Under these circumstances, the

(*f*) *Ex parte Clayton*, 1 Russ. & Mylne, 369.

committee agreed with the owner of the adjoining land to work the coal; which the Master reported to be for the benefit of the lunatic. Lord *Eldon*, C., confirmed the Master's report, observing that the next of kin had an interest that the coal should be worked, and that it might be done by the committee, being like cutting timber, for the heir-at-law had no interest, there being various remainders over (*g*).

In another case, it was referred to the Master to inquire whether it would be for the benefit of the lunatic and his estate to grant leases of coal mines, or seams of coal, belonging to him (*h*).

A committee of the estate has been directed to complete a contract for the purchase of real estate lying contiguous to the lunatic's estate.

By the petition of the committees of the estate of a lunatic, it appeared that they had contracted for the purchase of lands lying contiguous to, and convenient to be held with, the estates of the lunatic; whereupon it was referred to the Master to inquire and certify whether it would be for the benefit of the lunatic's estate that such contracts should be carried into effect, and whether a good title could be made to such lands (*i*). The Master having certified by his report, that it would be for the benefit of the lunatic's estate to complete such contracts, and that a good title could be made to the lands agreed to be purchased; and that the purchase money for such lands should be paid by the committees out of the rents and profits of the lunatic's estates; and that the amount of such purchase money should be charged on such estates, and considered as part of the lunatic's personal estate—It was ordered, that the committees should be at liberty to complete the purchase and to pay for the same out of the rents and profits of the lunatic's estate; but the Chancellor declared, that such purchase money should be so applied, without prejudice to any question which might arise, upon the death of the lunatic, as to whether the same be real or personal estate of the lunatic; and it was ordered, that it should be referred to the Master to settle and

(*g*) *Ex parte Tabbert*, 6 Ves. 428.

(*i*) *In re Drax*, 6 Aug. 1825.

(*h*) *In re Percival*, 6 June, 1822.

approve of a proper declaration of trust thereof accordingly, wherein all proper parties were to join, as the Master should direct; and it was referred to the Master to settle and approve of a proper deed of conveyance of the lands agreed to be purchased (*h*).

An exchange of lands belonging to the lunatic has been ordered to be effected by the committee of his estate.

It was referred to the Master, on the petition of the committee of the estate, to inquire and certify whether it would be fit and proper, and for the benefit of the lunatic and her estate, that a proposed exchange of lands lying intermixed with the lands of the lunatic should be carried into effect, with liberty for the Master to state special circumstances (*l*).

The Master, by his report, found that the third part to which the lunatic was entitled in the estate, was vested in her in fee simple, and certified that he was of opinion that it would be proper and for the benefit of the lunatic and her estate, that the proposed exchange of the lands of the other party and of the lunatic should be carried into effect:—on the confirmation of the Master's report, it was ordered, that the committee of the estate of the lunatic should be at liberty to carry into effect the proposed exchange, and that it should be referred to the Master to inquire and certify whether a good title could be made to the lands proposed to be exchanged, and, if so, that the committee of the lunatic's estate should execute in the name and on the behalf of the lunatic, such deeds of release and exchange as might be necessary and proper for carrying into effect the proposed exchange; such deeds to be settled by the Master; and the sum to be received for equality of exchange was directed to be paid into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery, in trust in the matter, to an account to be intitled "The Real Estate;" such sum to be laid out in the purchase of Bank 3*l.* *per cent.* Annuities, and the interest and dividends to accrue thereon to be laid out in like manner (*m*).

(*k*) *In re Drax*, 15 Aug. 1826.

(*m*) *In re Miller*, 26 Jan. 1830.

(*l*) *In re Miller*, 28 July, 1829.

Before the passing of the statutes (*n*) enabling the Lord Chancellor to order the estates of lunatics to be sold or leased, it was held that an order in lunacy for such purpose did not give any title, but only a right of enjoyment during the lunacy of the party whose right was affected (*o*); and as the statute (*p*) which now authorizes the disposition of the estate of lunatics, does not contain any power of exchanging his lands, it may well be doubted, whether an exchange effected under the order of the Court would bind the lunatic if he recovered, or, if he did not, his heirs.

By the general Inclosure Act (41 Geo. 3, c. 109, s. 15), the commissioners under acts of inclosure are empowered to allot lands belonging to lunatics in exchange for others, with the consent of their committees testified in writing under their hands. And by the 16th section of the same act, such commissioners may, with the consent of the committees of lunatics, make partition of lands belonging to them, and allot the same in severalty. By the 17th section of the same act, the persons to whom allotments are made, are required to accept the same within a limited time, or to forfeit their rights. By the 18th section, committees of lunatics are required to accept the allotments made to them; but it is provided, that the non-acceptance of any such committee shall not exclude, or in any way prejudice the right of such lunatic who shall accept his allotment within twelve calendar months after such disability shall be removed. By the 30th section of this act, committees of lunatics may charge allotments or exchanged lands with such sum of money as the commissioners shall, by their award, adjudge necessary to defray their shares of the expenses of obtaining and carrying inclosure acts into execution, not exceeding five pounds for every acre of such allotments or exchanged lands; and grant, mortgage, surrender, lease, or demise, or otherwise charge the hereditaments to be charged,

(*n*) 43 Geo. 3, c. 75; 59 Geo. 3, c. 80; 9 Geo. 4, c. 78; see *post*, Ch. viii. ss. 1, 2.

(*o*) *Ex parte Dykes*, 8 Ves. 79;

but see *Perkins*, s. 29; *Shepp. Touch.* 291; see *post*, Ch. vi. s. 2.

(*p*) 11 Geo. 4, and 1 Wm. 4, c. 65; see *Turner v. Edgell*, 1 Keen, 502.

to any persons who will advance the money, for any term or number of years; or, in case the person in possession liable to pay such expenses, or enabled by the act to charge such lands, shall choose to advance the money, then the commissioners may mortgage such lands to the persons paying the expenses for securing the sum paid, upon the terms and in manner expressed in the act.

The act for facilitating the inclosure of open and arable lands in England and Wales, authorises the committees of idiots and lunatics to act on their behalf in carrying that act into execution (*q*), and to enter into agreements for compensation in respect of certain interests to be made to the lunatic, by the persons making an inclosure (*r*).

Whenever any person interested in land subject to be inclosed under the 8 & 9 Vict. c. 118, or otherwise subject to the provisions of that act, shall be a lunatic or idiot, the committee of the estate or in default thereof, such persons as may be nominated for that purpose, by the inclosure commissioners of England and Wales, under their hands and seal, shall for the purposes of that act, be substituted in the place of the person so interested (*s*).

In most acts of inclosure, the committees of lunatics are enabled to perform certain acts on their behalf.

In one case, it was referred to the Master to settle and approve of a mortgage of the allotments awarded to the lunatic under an inclosure act, for securing the repayment of the sum to be advanced out of the lunatic's personal estate, as his proportion of the expenses of the inclosure chargeable on the estate of which the lunatic was tenant for life; and the commissioners under the inclosure act, and the committees of the lunatic's estate were ordered to execute the mortgage when approved by the Master; the amount of such expenses being the consideration for the mortgage (*t*).

Any person entitled in possession to any land as tenant by the curtesy, or for his own life, or any other life or lives, or for

(*q*) 6 & 7 Wm. 4, c. 115. ss. 1, 35. sections 137, 141.

(*r*) *Ib.* s. 42.

(*t*) *In re Smyth*, 21 Jan. 1823.

(*s*) 8 & 9 Vict. c. 118, s. 20; see

years determinable on any life or lives, or any idiot or lunatic entitled as aforesaid by the committee of his estate (amongst other persons), may petition the Lord Chancellor or the Master of the Rolls for leave to make any permanent improvement in the land, to which such person shall be so entitled, or any part thereof, by draining the same with tiles, stones, or other durable materials, or by warping, irrigation, or embankment, in a permanent manner, or by erecting thereon any buildings of a permanent kind, incidental or consequential to such draining, warping, irrigation, or embanking, and immediately connected therewith, and shall on such petition be at liberty to pray that the expense of making any such permanent improvement may be made a charge on the inheritance of the land, under the provisions of the act 8 & 9 Vict. c. 56 (*u*).

Upon the presentation of any such petition, the Court may, without requiring the attendance of any counsel or solicitor, refer it to one of the Masters of the Court of Chancery to make all necessary and proper inquiries, and consider all such estimates and valuations as shall be produced before him in relation to the matter of such petition, and thereupon to report whether in his opinion, it will be beneficial to all persons interested in the land, that such permanent improvement should be made under the provisions of that act (*v*).

By the act to promote the drainage of lands and improvement of navigation, in connection with such drainage in Ireland, any committee of any idiot or lunatic, (on behalf of idiots, or lunatics), may apply, if they shall think fit, in a summary way, by petition to the Court of Chancery in Ireland, for leave to assent to the execution of any works proposed to be done under the provisions of that act; and such Court shall have power to inquire into the propriety of giving such assent, and to make such order on the petition, and as to the costs thereof, as to the Court shall seem meet; and if the Court shall authorize any such assent being given, the person who shall have presented the petition may give such assent, and the same shall be as effectual as if the person giving the same had been the

(*u*) See Daniell's, Ch. Pr. 1761, (*v*) 8 & 9 Vict. c. 56, s. 4.
2nd Ed.

actual proprietor of the lands, in respect of which such assent shall be given (*w*).

By the statute for consolidating the acts relating to the redemption of land-tax (42 Geo. 3, c. 116, s. 14) (*x*), all committees of lunatics or of idiots may contract and agree, on behalf of such lunatics and idiots, for the redemption of any land-tax made redeemable, which such lunatics and idiots could have redeemed by virtue of the act if they had not been under any incapacity. By the 53rd section of the same act, committees and curators of lunatics or idiots have power to sell or mortgage and convey or grant any rent-charge out of any lands, belonging to or limited to the use or for the benefit of any such lunatics or idiots, which they could have sold or mortgaged, or charged with any rent-charge for the purpose of redeeming any land-tax in respect of their estate and interest therein either by virtue of that act or otherwise, if they had not been under any such incapacity. And by the 97th section of that act, the committees of any person interested in remainder, reversion, or expectancy, in any estate in England, of which any part shall be proposed to be sold or mortgaged, who shall conceive themselves aggrieved by such sale or mortgage, may, at any time before such estate shall have been actually conveyed, present a petition to the Court of Chancery, which Court shall have power, in a summary way, to make such order respecting the suspension of a proceeding in such sale or mortgage, or for sale or mortgage of any other part of the estate in question, as well as for payment of costs, as such Court shall think fit.

The Lord Chancellor sometimes orders the land-tax charged on the estates of lunatics to be redeemed, and the consideration for it to be paid out of funds in Court, or by a sale or mortgage of part of the estates belonging to lunatics, or by the produce of timber directed to be felled on their estates.

In one case, it was ordered that the committees should be at liberty to carry into execution two contracts for the redemp-

(*w*) 5 & 6 Vict. c. 89, s. 25.

(*x*) The statutes for regulating the redemption of the land tax, are collected in a note to Vol. 3 of

Bythewood's Conveyancing, by Jarman, 387, 438, *m*, 2nd edit.; and Burn's Justice, tit. "*Land-Tax*."

tion of land-tax charged on the lunatic's estate, and, for that purpose, to sell certain farms belonging to her; and, upon payment of the purchase-money into the Bank of England to the account of the commissioners for the reduction of the national debt, to execute a proper conveyance to the purchaser; and the purchase-money, and the produce of stock belonging to the lunatic, were directed to be applied in satisfaction of such contracts for redemption. And the Lord Chancellor added a declaration, that the order was made without prejudice to any question between the co-heirs-at-law and next of kin of the lunatic, out of what estate the consideration for the aforesaid contracts should be provided for (*y*). In another case, after an order for redeeming land tax had been made, it was referred to the Master to settle and approve of a proper mortgage for securing the consideration for redeeming land-tax upon the lunatic's estate, in trust for the next of kin of the lunatic, in case he should die intestate, or for such persons as would be entitled to his personal estate (*z*). And the produce of timber directed to be cut upon the lunatic's estate was in another case directed to be applied in redeeming the land-tax (*a*).

By statute 11 Geo. 4 & 1 Wm. 4, c. 65, s. 26, the committee of the estate of any lunatic, with the approbation of the Lord Chancellor, intrusted as therein mentioned, to be signified by an order to be made on the petition of such committee in a summary way, may enter into any agreement on behalf of such lunatic which the guardian of an infant might have entered into on behalf of an infant by virtue of the statute of the 1 Geo. 1, c. 10, s. 9, for making more effectual the provisions for augmenting the maintenance of the poor clergy.

Whenever the patron of any living or benefice, to which the provisions of Gilbert's Acts are proposed to be extended, shall happen to be a lunatic, his committee may transact the several matters therein mentioned for such patron, who will be bound thereby in such manner as if he had been of sound mind (*b*). In any case in which the consent of the patron being an idiot

(*y*) *In re* Duchess of Norfolk,
8 July, 1819; see *post*, s. 13.

(*z*) *In re* Flitcroft, 21 Jan. 1806.

(*a*) *In re* Fust, 12 Aug. 1813;
see *post*, s. 13.

(*b*) 17 Geo. 3, c. 53, s. 14.

or lunatic of any benefice shall be required to the exercise of any power given by the act for amending the law for providing fit houses for the beneficed clergy—the committee or committees, may execute the instrument of the consent of such patron for him (*c*).

Whenever the patron of any benefice or the owner of any lands or tithes, to which the Tithe Cmmutation Act applies, or any person interested in any question as to any tithes, is an idiot or lunatic, the committee of the estate or in default thereof, such person as may be nominated by the tithe commissioners, is substituted in the place of such patron, owner, or person so interested (*d*).

The committees of persons of unsound mind may execute on their behalf any agreement of reference, or deed of submission, or approbation of any award or map authorized to be made by a recent act, for identifying ecclesiastical lands (*e*).

If a power coupled with an interest, or a mere naked authority, devolves upon idiots or lunatics, it is in most cases suspended during the continuance of such disabilities (*f*); and therefore the committees of lunatics cannot execute powers given to lunatics, and, previously to the statute 43 Geo. 3, c. 75, s. 3, powers of leasing could not be exercised by them (*g*)—Lord *Hardwicke* held, that he could not authorize the committee to execute a power of leasing given to a lunatic; and put the case of a voluntary settlement made by a party before his lunacy, with a power of revocation, and that of a power to charge an estate with a sum of money; and said that the committee could not execute such powers (*h*).

It seems clear, although the contrary has been suggested, that the donor of a power cannot, by any provision inserted in the instrument creating a power, authorize the party to execute it notwithstanding his mental incapacity; for a person under

(*c*) 1 & 2 Vict. c. 23, s. 12; see 1 & 2 Vict. c. 29; 2 & 3 Vict. c. 49, ss. 17, 19.

(*d*) 6 & 7 Wm. 4, c. 71, s. 15; see *Ib.* s. 48; *Shelford on Tithes*. 237, 269, 3rd ed.

(*e*) See 2 & 3 Wm. 4, c. 80, s. 3.

(*f*) *Mansell v. Mansell*, Wilmot's notes, 51, 52.

(*g*) See *post*, Chap. viii. s. 1.

(*h*) *Ex parte* Lord *Bradford*, Cas. temp. *Hardwicke*, by *West*, 1 Vol. p. 133.

such a disability cannot (with a few exceptions) make any deed which will bind the property of himself or others; and the case is not like coverture, which is a mere *civil* and not a mental disability (*i*), and which, in the creation of a power, may be dispensed with; there does not, however, appear to be any legal objection to a provision that a power given to a particular person shall, in the event of his mental disability, be executed for him by his committees, or by some person of competent understanding. It has indeed been intimated (*k*), that an idiot or lunatic can execute a bare authority; but, as all deeds executed by such persons (except during lucid intervals, or with certain formalities implying capacity), are absolutely void, it does not appear that such a proposition can be supported.

Where a bare authority, to be exercised for the benefit of other persons, is given to a lunatic, it does not appear that it can be executed by his committee, or by any other person in his place; for, the statute (*l*) authorizing the transfer of trust estates vested in lunatics does not extend to such a case.

In a case where it was provided by an act of Parliament, that it should be lawful for a parson and his successors, vicars of a particular church, by indentures sealed and delivered by the vicar of the church for the time being, to demise or lease, with the consent in writing of the bishop of the diocese, *and the patron of the vicarage* for the time being, all or any parts of the glebe lands described in the schedule to the act, for any term of years not exceeding ninety-nine years in possession, for purposes of building.—The patron of the living being a lunatic, the committees of his estate prayed a reference to the Master to inquire whether it would be proper that they, as such committees, should consent to any lease, to be granted in

(*i*) *Id.* Co. Litt. 52, a., 112, a., note 6; *Gibbons v. Moulton*, Finch, 346; *Daniel v. Ubley*, W. Jones, 137; *Bayley v. Warburton*, Com. Rep. 494; *Rich v. Beaumont*, 6 Br. P. C. 152; *Marquess of Antrim v. Duke of Bucks*, 1 C. C. 17; *S. C.* 1 Eq. Cas. Abr. 343; *Wright v.*

Cadogan, 1 Br. P. C. 486, Ambl. 468; see 1 Chance on Powers, No. 595, Sugd. on Powers, Chap. iii. s. 1.

(*k*) See 1 Preston on Abstr. p. 328; see *post*, Chap. vi. s. 2.

(*l*) 11 Geo. 4, and 1 Wm. 4, c. 60; and see *post*, Chap. viii. s. 3.

pursuance of the act of Parliament, of all or any parts of the glebe lands described in the schedule thereto. Lord *Eldon*, C., held, that, unless the act requiring the consent of the patron authorized the committee to consent for him, he could not sanction a lease with the consent of the committee (*m*).

The committee of a lunatic cannot make grants of the copyholds held of his manor. Where a person, being seised of a manor with a custom of granting copyholds for lives, had granted the stewardship of the manor by deed, and was afterwards found *non compos mentis* by inquisition—it was held, that the committees could not grant any copyhold estate; for they had by law no estate in the manor, and were not lords; but that the lunatic, by his steward, might grant copyhold estates, according to the custom of the manor. But it was ordered, by way of caution, for the benefit of the lunatic, that the steward should not make any grant without the privity of the committees, and the sanction of the Court. (*n*).

As a copyholder does not derive his estate out of the interest of the lord of the manor only, but the essence of a copyhold is the custom of the manor, where a grant is made by a lord, who has a lawful estate or interest, the lord being considered as an instrument only to grant, the copyholder is in by the custom of the manor after the grant has been made, without regard to the extent of such estate or interest, or the capacity of the person of the grantor; so that, if a lord be *non compos*, such grants, surrenders, and admittances of and to copyholds held of the manor, as are warranted by the custom of it, will be good, notwithstanding the mental disability of the lord (*o*).

It seems that the Master will be directed to appoint stewards of manors belonging to a lunatic. Thus, on the petition of the committees of the estate, in a case where a lunatic was entitled to certain manors, the stewardship of which had not been *granted*—it was referred to the Master to appoint one or

(*m*) *Ex parte Smyth, In re Smyth*,
2 Swanst. 393.

(*n*) *Blewit's case*, Ley. 47; 6 Vin.
Abr. Copyhold (G.) pl. 15; 1 Watk.
on Cop. 24.

(*o*) Co. Cop. s. 34; 4 Rep. 23, b;
8 Rep. 63, b; Vin. Abr. Copyhold
(G), pl. 18; Gilb. Ten. by Watk.
255; 1 Watk. on Cop. by Cov. 30.

more steward or stewards of such manors, without their entering into any security touching the rents and profits thereof, until further order (*p*). But, where the committee of the estate of a lunatic, being also his heir-at-law, presented a petition praying that two persons might be removed from the stewardship of certain manors belonging to the lunatic, and ordered to deliver up the Court rolls, and that the committee might be at liberty to appoint a steward—the Lord Chancellor refused to make any order for that purpose, but allowed the petitioner the costs of his application (*q*).

It is said, that a lunatic copyholder could not formerly have committed a forfeiture of his copyhold (*r*). The committee is bound, however, if the estate of the lunatic be subject to services or held upon conditions, to tender the services or perform the conditions, so as to prevent a forfeiture; the law indeed (with an exception to its general rule) permits even a stranger to perform such offices of humanity (*s*).

By a recent statute (*t*), the committee of a lunatic may be admitted tenant of any copyhold lands to which such lunatic shall become entitled; and (*u*) in default of the appearance of any lunatic in person or by his committee, the lord of the manor, after three Courts, and proclamations having been made, may appoint, at any subsequent Court, an attorney for such lunatic for the purpose of admitting him, and, upon such admittance, impose such fine as might have been legally imposed if such lunatic had been of sane mind. The fine imposed is directed (*v*) to be demanded of the committee of the lunatic, or the tenant of the copyhold land, and, if the fine is not paid within three months, the lord of the manor may enter on such land and receive the rents, until he shall be satisfied such fine and costs. It is also provided (*w*), that a committee who pays such fine and costs, may enter upon and

(*p*) *In re Smyth*, 19 June, 1824.

(*q*) *In re Jodrell*, 31 March, and 13 Aug. 1828.

(*r*) *Shepp*, Court Keep. Ch. 22; Co. Cop. s. 59.

(*s*) Co. Litt. 206, b; Vin. Abr. Condition K. a pl. 10.

(*t*) 11 Geo. 4. and 1 Wm. 4, c. 65, s. 3; see *ante*, p. 14.

(*u*) 11 Geo. 4, and 1 Wm. 4, c. 65, s. 5.

(*v*) *Id.* s. 6.

(*w*) *Id.* s. 8.

receive the rents of the land of the lunatic, to which he shall have been admitted until such committee shall have been satisfied the sums he has so paid. And it is provided (*x*), that no lunatic shall forfeit any copyhold land for neglecting to be admitted, nor for omitting to pay any fine for his admittance.

The committee has no power to present to a vacant benefice belonging to a lunatic (*y*).

Where the right of visiting a charitable institution has devolved upon a lunatic, so found by inquisition, the committee of such lunatic cannot exercise the office of visitor; but it vests in the Crown, and will be executed by the Lord Chancellor; and an application respecting the management of the charity must be made to him in his capacity of visitor (*z*).

Provisions by statutes have from time to time been made, authorizing the transfer of stocks in the public funds standing in the names of lunatics or their committees (*a*).

Stock belonging to lunatics may be ordered to be transferred.
—Where any stock shall be standing in the name of, or shall be vested in, any person, being lunatic, who shall be beneficially entitled thereto, or shall be standing in the name of, or vested in, any person, being committee of the estate of a person found lunatic, in trust for, or as part of his property, and such committee shall have died intestate or shall himself become lunatic, or shall be out of the jurisdiction of, or not amenable to the process of the Court of Chancery, or it shall be uncertain whether such committee be living or dead, or such committee shall neglect or refuse to transfer such stock,

(*x*) 11 Geo. 4, and 1 Wm. 4, c. 65, s. 9.

(*y*) See *ante*, p. 21.

(*z*) *Attorney-General v. Dixie*, 13 Ves. 519. See *Shelford* on Charities, p. 341.

(*a*) See 36 Geo. 3, c. 90, s. 3, which was repealed by 6 Geo. 4, c. 74, which has since been repealed by 11 Geo. 4, and 1 Wm. 4, c. 65. The 36 Geo. 3, c. 90, was confined to the case of stock standing in the

name of the lunatic himself, or his committee, and did not extend to stock standing in the name of another person, to which the lunatic was entitled as administrator; *Ex parte Adams*, 2 Mer. 112; nor to stock standing in the name of a lunatic resident at Amsterdam, for whom curators had been regularly appointed by a judicial proceeding in that city; *Sylva v. Da Costa*, 8 Ves. 316.

and to receive and pay over the dividends thereof to a new committee, or as he shall direct, for the space of fourteen days next after a request in writing for that purpose shall have been made by any new committee, then and in every or any such case, the Lord Chancellor intrusted with the care of lunatics, upon the petition of the committee of the estates of the person being lunatic, or of the person reported by the Master, to whom the matter is referred as a proper person to be such committee, although such report shall not have been confirmed, may direct such person as such Lord Chancellor shall think proper to appoint for that purpose, to transfer such stock to or into the name of any new committee, or in the name of the Accountant-General of the said Court, or otherwise, and also to receive and pay over the dividends thereof, or such sum or sums of money, in such manner as such Lord Chancellor shall think proper: and such transfers and payments shall be valid and effectual to all intents and purposes whatsoever (*b*).

On the petition of the committee, it will be ordered that the Accountant-General, secretary, or deputy-secretary, for the time being, of the Governor and Company of the Bank of England, do transfer the stock (naming the amount and description of it) standing in the books at the Bank of England in the name of the lunatic, into the name and with the privity of the Accountant-General of the Court of Chancery in trust in the particular matter, who is to declare the trust thereof accordingly; and the committee is, as a matter of course, allowed the costs of his application out of the lunatic's estate (*c*).

The statute 56 Geo. 3, c. 60, authorizes the transfer to the Commissioners of the National Debt, of all stock upon which dividends have been unclaimed for ten years. And an order for the transfer of stock under that act was made without a reference to the Master, on the petition of the committee of a lunatic, stating that 6,300*l.* of stock was standing in the name of the lunatic; that, as no dividends had been claimed on that

(*b*) 11 Geo. 4, and 1 Wm. 4, c. 65, clause.

s. 33. See s. 2, the interpretation

(*c*) See *ib.* s. 43.

sum for twenty-seven years, the stock had been carried over to a separate account, under the provisions of that act; and that the Bank, on being applied to, refused to make the transfer required by the committee, without the sanction of the Court (c).

The taxed costs of the Attorney-General and the Commissioners for the reduction of the national debt, under the statute 56 Geo. 3, c. 60, are, in the absence of special circumstances, to be paid out of the fund recovered (d).

Stock in names of lunatics abroad may be transferred.—If any stock shall be standing in the name of, or vested in, any person residing out of England, it shall be lawful for the Lord Chancellor intrusted as aforesaid, upon petition, and proof being made to his or their satisfaction that such person has been declared lunatic, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where such person shall reside, to direct any person whom such Lord Chancellor shall think proper to appoint for that purpose to transfer such stock, or any part or parts thereof, into the name of any such curator or other such person as aforesaid, or otherwise, and also to receive and pay over the dividends thereof, as such Lord Chancellor shall think fit; and that such transfers and payments shall be valid and effectual to all intents and purposes whatsoever (e).

When a person resident out of England has been found a lunatic in such place, and the parties interested are desirous of obtaining the transfer of any funds vested in such person, the Lord Chancellor will, on petition, refer it to a Master of the Court of Chancery to inquire and certify whether such person has been found or declared a lunatic or of unsound mind, according to the laws of the place where he resided, and also, whether the personal estate of the lunatic has been vested in any and what person appointed, either as his curator or other-

(c) *In re Avery*, 1 Russ. & Mylne, 379.
356; and see *Ex parte Nicholl*,
Turn. & R. Rep. 119.

(d) *In re Holland*, 1 Phill. C. C. 379.
(e) 11 Geo. 4, and 1 Wm. 4, c. 65,
s. 34; see repealed statutes, 1 & 2
Geo. 4, c. 15; 6 Geo. 4, c. 74, s. 14.

wise, for the management thereof; and, on the Master reporting that the party has been found lunatic, or of unsound mind, and that his personal estate has been vested in a curator according to the laws of the place where he resided, within the meaning of the last-mentioned act, the Lord Chancellor, on another petition being presented, will order the Master's report to be confirmed, and the fund to be transferred into the name of the curator, and the dividends which have accrued to be paid to him (*f*).

In another case, where it appeared that a party resident at Lisbon had been declared by the Court there deranged and incapable of governing her person or property, and that it was proper that she should be put under guardianship, and that the petitioner had been nominated guardian, on giving security for accounting for her property, and that a letter of administration of all the lunatic's real and personal estate had been granted to the petitioner; an order was made, under the statute 6 Geo. 4, c. 74, for the transfer of 500*l.* 3*l.* *per cent.* Consolidated Bank Annuities, standing in the lunatic's name in the books of the Bank of England, to the petitioner, and for the payment of the dividends to be applied for the benefit of the lunatic (*g*).

The committees of the estates of idiots and lunatics, having the control over £3 10*s.* *per centum* Annuities, or government debentures, were authorised to signify their dissent from receiving New £3 5*s.* *per cent.* Annuities, in lieu of such first mentioned Annuities, and were indemnified for not signifying such dissent (*h*).

Payment and investment of lunatic's property.—When a person entitled to a legacy or share of personal estate has been found a lunatic, by inquisition, the proper course seems to be for the executor, or other person liable to make the payment, to apply to the Lord Chancellor, by petition, for leave to pay the money due to the lunatic into the name of the Accountant-General of the Court of Chancery, in trust in the lunacy, or the committee of the estate may apply for a similar order.

(*f*) *In re Irvine*, 22 March, and
28 April, 1828.

(*g*) *In re Pedra*, 23 April, 1827.

(*h*) 7 & 8 Vict. c. 5, s. 6. See
3 Geo. 4, c. 9, s. 6; 5 Geo. 4, c. 11,
s. 9.

In a case where a lunatic was entitled to a share in the residue of personal estate bequeathed by a will, an order was made, on the petition of the other residuary legatees, to transfer and pay the share of the lunatic into the name of the Accountant-General, in trust in the lunacy (*i*).

It is stated, indeed, in a very useful work (*k*), that the committee is the proper person to receive and give a discharge for a legacy due to a lunatic; and it is clear, that payment of a legacy to the lunatic is open to objection, on the ground of the lunatic's incapacity to give a legal discharge to the executors of the will under which the lunatic is entitled. But, in many cases, the safer course appears to be, for the party not to pay a legacy or other sum of money due to a lunatic, without an order having been obtained, either on his own petition or on that of the committee, which would indemnify the person making the payment from any misapplication of such money by the committee.

If a legacy be given for the benefit of the legatee in one way, and, on account of his subsequently becoming lunatic, it cannot be so applied, it seems that it may be applied for his benefit in another mode (*l*).

Money belonging to lunatics, whether in the hands of their committees or the Accountant-General of the Court of Chancery, or due from other persons, will generally be ordered to be invested, in the name of the Accountant-General in trust in the particular lunacy, in the purchase of 3*l.* *per cent.* Consolidated Bank Annuities, in preference to any other security. The Court of Chancery, as a general rule, adopts that fund as most beneficial to the suitors of the Court, and never departs from such rule without special circumstances (*m*).

The Accountant-General was ordered to lay out a particular sum in his hands in the purchase of such stock, and the dividends thereof, and also the dividends to accrue on other stock before

(*i*) *In re Sherard*, 9 June, 1831.

(*k*) See 1 Roper on Legacies, 778, 3rd ed.

(*l*) *Per Sir W. Grant*, 5 Ves. 463; see *Barlow v. Grant*, 1 Vern. 255;

Leche v. Lord Kilmorey, Turn. & R. Rep. 207.

(*m*) *Norbury v. Norbury*, 4 Madd. 191.

standing in his name, and all accumulations thereof, in the purchase of like annuities (*n*).

On the petition of the committee, it was ordered that bankers should pay the sum in their hands belonging to the lunatic into the Bank with the privity of the Accountant-General (*o*).

General orders for investing the balances in the hands of the committees are sometimes made. Thus, on the petition of the committees of the estate, it was ordered that they should be at liberty, from time to time until further order, to pay into the Bank, in the name of the Accountant-General, such sums of money as the Master should certify to be proper to be so paid, on account of the rents and profits of the lunatic's estates; and such sums were directed to be laid out in the purchase of 3*l.* *per cent.* Consolidated Annuities, and the dividends and accumulations thereof, as well as of the other stock then standing in the matter, were ordered to be laid out from time to time in like manner (*p*). And sometimes it is ordered that the dividends of stock shall be invested from time to time, to form an accumulating fund (*q*).

The purchase money of timber cut on a lunatic's estate, will be ordered to be paid into Court. An application was made by the committee, that the purchasers of timber belonging to the lunatic's estate might pay the instalments of their purchase money to the receiver; and that he might apply it in discharge of certain debts which the Master had found to be owing by the lunatic, and might pay the residue into Court. But the order made was, that the several purchasers should pay their respective purchase monies into the Bank, with the privity of the Accountant-General, in trust in the matter (*r*).

On an application being made, that certain promissory notes given for the residue of the purchase money of timber on a lunatic's estate might be deposited in the Master's office; and that, when the notes became due, the receiver might be at liberty to receive the sums secured by them, and to pay the amount into Court, an order was made that the receiver should

(*n*) *In re Morris*, 11 Feb. 1828.

(*o*) *In re Davidson*, 4 July, 1827.

(*p*) *In re Drax*, 23 Feb. 1828.

(*q*) *In re Rodick*, 9 Aug. 1827.

(*r*) *Ex parte Cranmer*, *In re Cranmer*, 1 Russ. 477, n. (*a*).

be at liberty to receive payment of the promissory notes, and that he should pay the money when received into Court, the amount to be verified by his affidavit (*s*).

The Court will order stock belonging to a lunatic, standing in the name of a trustee, to be transferred into the name of the Accountant-General of the Court of Chancery, in trust in the matter (*t*).

Where a married woman, who was the committee of the estate and person of her lunatic husband, was entitled to stock standing in the name of a trustee for her; and such stock was, under an order made in the lunacy, transferred into the name of the Accountant-General, in the matter of the lunacy, and part of it was afterwards sold out and applied in payment of costs; and the lunatic died, leaving his wife him surviving; it was held, that the stock had been reduced into the possession of the lunatic, and that the wife was not entitled to it by right of survivorship (*u*).

The general rule for investing the personal property of lunatics in the funds, has in some instances been departed from, and part of their fortunes directed to be invested in the purchase of a Government Life Annuity, in order to afford a more ample fund for maintenance.

An inquiry having been directed into the state of the funds of a lunatic, and whether it would be for his benefit to invest his property in the purchase of an annuity for his maintenance, the Master's report stated, that, after his debts were discharged, there would remain 800*l.*; and that it would be for his benefit to lay out that residue in a Government annuity for the life of the lunatic, to be applied to his maintenance. Upon the petition of the committee, the Master's report was confirmed, and an order made for purchasing the annuity (*v*).

In another case, where it appeared that the lunatic was only possessed of the sum of 900*l.* and 350*l.* 3 *per cent.* Bank Annuities, it was ordered, that the committee should be at liberty to transfer the 900*l.* in the purchase of an annuity for

(*s*) *Ex parte Clayton, In re Star-
kie*, 1 Russ. 476.

(*t*) *In re Mitchell*, 3 April, 1828.

(*u*) *In re Jenkins*, 5 Russ. 183.

(*v*) *Ex parte Stonard*, 18 Ves. 285.

the life of the lunatic, pursuant to the statute 48 Geo. 3, c. 142; and that such annuity, when so purchased, should be accepted by the committee and two other persons, in trust for the use and benefit of the lunatic, and be from time to time received by them, and applied in the maintenance of the lunatic (*w*).

In another case, on the petition of the committee of the estate, it was referred to the Master to inquire what plan could be most advantageously adopted for the future maintenance of the lunatic, whether by sale or exchange of her third parts or shares to which she was entitled in certain property, or any part thereof, and by obtaining in lieu thereof a Government or any other annuity on her life of an adequate amount, or by any other and what mode (*x*).

The committee of the estate will not in general be allowed to invest the lunatic's property on a mortgage of real estate. Upon an application to lay out on mortgage a sum of 3000*l.* in the hands of the Accountant-General, belonging to the lunatic's estate, and the production of several orders of the same nature which had been made in the same lunacy, Lord *Thurlow*, C., said, that, although he was perfectly convinced by what was stated, that the proposed security was perfectly good, yet he could not permit such a precedent to be made; and that he was aware, that, in former times, the Court had laid out the money not only of lunatics but of infants in this manner; but, in later times the Court had considered it as improper to invest any part of the lunatic's estate upon a private security; and it would be a dangerous precedent to break in upon that rule: and he therefore directed the money to be laid out in the 3*l. per cent.* Bank Annuities (*y*).

In a case where a petition was presented, praying that the committee might be at liberty to lay out a sum of money belonging to the lunatic upon a mortgage of real estate supported by two similar orders (*z*), Lord *Eldon*, C., said, the

(*w*) *In re Baldmin*, 6 Aug. 1814. 182.
A similar order was made *in re Barrass*, 16 Nov. 1825.

(*x*) *In re Chabot*, 20 June, 1827.

(*y*) *Ex parte Cathorpe*, 1 Cox.

(*z*) *Ex parte Roxburgh*, *In re Meux*, 4 Feb. 1817; and *Ex parte Langley*, *In re Fust*, 14 July, 1817.

general rule is, not to lay out the lunatic's money on any thing but Government securities, except in very peculiar cases, as, where the lunatic has an interest in the estate, or it is in some other manner connected with his immediate interests (*a*). It appears, that, in the case last cited, an order was made for referring it to the Master to inquire and certify whether it would be for the advantage of the lunatic and his estate, to lay out any and what part of his fortune on real estate at interest, and, if he was of that opinion, the grounds of it were to be stated (*b*). By the report made under that order, it appeared that the property of the lunatic consisted of bills and other securities which had become due, and were about to be paid; and, that in consequence of the high price of stock, a comparatively low interest could be obtained; and the Master found that it would be for the benefit of the lunatic's estate to lay out part of his fortune on real security. The report was confirmed with respect to laying out part of the lunatic's money on the security of a particular estate, in case the Master should approve of it, and a good title could be made to it; and, if the Master approved of the proposals, then he was to investigate the title to the estate in question, and settle proper securities to be made to the committees of the estate; and, upon the deeds being executed by all proper parties, the committees were to be at liberty to pay the loan to the mortgagor, or as he should direct (*c*).

Money belonging to a lunatic has been ordered to be lent on mortgage, for the accommodation of his family. Thus, where a petition was presented by the committee of the fortune, praying an inquiry whether it would be for the benefit of the lunatic, that a sum of money, part of the savings of his income, should be laid out on mortgage, and the next of kin consented, and the families of the lunatic and of the owner of the estate on which it was proposed to lend the money, were connected by intermarriage, Sir *A. Hart*, C., said, as the estate

(*a*) *Ex parte Ellice*, Jac. Rep. 234; see *Norbury v. Norbury*, 4 Madd. 191.

(*b*) *In re Ellice*, 30 July, 1821.

(*c*) *In re Ellice*, 28 Aug. 1821.

was large, and the parties stood in a degree of relationship, he should make the order of reference; but he should require the security to be the first incumbrance. If the property was fixed in the present next of kin, who consented, there would be no difficulty; but they might die before the lunatic, and the persons who would then be next of kin would not be bound by their consent, and might complain of the delay of an equity suit in getting in this money, instead of its being immediately available in stock. He said that Lord *Eldon* always took the distinction of never permitting the fund to be lent to a stranger, but sometimes allowed it to be laid out to relieve and accommodate the lunatic's family upon a first mortgage, but never on a second, even if reported for the benefit of a lunatic; for, a mortgage might be good, and yet the entanglement of real property make it ineligible for a fund of this kind (*d*).

Expenditure of money in repairs, &c.—The committee of a lunatic's estate will not in general be allowed any sums of money which he has expended, unless he has applied for, and obtained an order of the Court (*e*). In a case where a petition was presented by the committee of a lunatic, praying an allowance for repairs made without a previous order, the Lord Chancellor refused to allow them, although the Master's report stated that such repairs were necessary (*f*). But, where the committees had expended money in repairs without a previous order, and the persons entitled to the estate in remainder expectant on the lunatic's death, were willing to take upon themselves part of the expenditure, an inquiry was directed, regard being had to the estate of the lunatic, and to the proportion that ought to fall upon the inheritance, and to what part such owners were willing to bear (*g*). On a motion being made that a receiver might be allowed for necessary repairs which had been done on the lunatic's estate, the Lord Chancellor granted a reference to the Master, to inquire whether the repairs were reasonable, with liberty to apply again; but,

(*d*) *Ex parte Johnson*, 1 Molloy's Cases in Ireland, temp. Hart. 128.
(*e*) *Ex parte Marton*, 11 Ves. 397.

(*f*) *Anon.* 10 Ves. 104.

(*g*) *Ex parte Hilbert*, 11 Ves.

397.

he observed, that the Court was not in the habit of permitting receivers and committees to apply trust funds in repairs to any considerable extent, without a previous application (*h*).

Where alterations, additions, or improvements are requisite in or to a lunatic's estate, the committee of the estate must obtain the Lord Chancellor's sanction to the necessary outlay before the commencement of the works (*i*).

Lord *Cottenham*, C., laid down a rule, that where committees of lunatics expended money in the repair of their estates (in this case the committee had built a barn) without having the previous sanction of the Court, upon their coming to the Court for a reference to the Master to find whether it might be proper to lay out such a sum of money, for such a purpose, upon the lunatic's estate; though the Master should approve of the expenditure, yet he would fix the costs of the reference upon the committees (*k*).

By the new orders the Master in Lunacy is at liberty, without special order, to receive any proposal or conduct any inquiry as to managing, setting, or letting, or otherwise, respecting the property of any lunatic, and may report thereon, but such report must be confirmed in the same way as reports made upon special reference (*l*).

On proposals for repairs to a large amount the Master in Lunacy usually desires to have the report and estimate of a surveyor, or architect, setting forth the condition of the buildings in question, specifying the repairs wanted, and estimating the expense. If the Master in Lunacy approves of the proposal, he also, before he makes his report, asks that a contract, if the work can be properly contracted for, be entered into, pledging the contractor to do the work specified for the sum named, and in a workmanlike manner, and to the satisfaction of the surveyor or architect (*m*).

Where the committees of the estate of a lunatic who were entitled to the real estate on his death, purchased timber for

(*h*) *Attorney-General v. Vigor*, Ch. 264.

11 Ves. 563; but see *Blunt v Clitherow*, 6 Ves. 799.

(*k*) *In re Churchill*, 3 Jur. 719.

(*l*) 13 Order, 27 Oct. 1842.

(*i*) *In re Buckle*, Law J., 1839,

(*m*) *Elmer*, p. 33.

repairs, although there was sufficient on the estate proper to be cut, they were ordered to refund the price of the timber, for the benefit of the personal estate (*n*).

When the buildings on the lunatic's estate require any extraordinary reparation, as to which the Masters in Lunacy refuse to inquire and report, the proper course is for the committee of the estate to present a petition, praying that it may be referred to the Masters to inquire and certify whether it will be proper and for the benefit of the lunatic and his estate, that a particular messuage or other buildings, according to the circumstances of the case, should be repaired, and that the Masters may certify what sum will be reasonable and proper to be allowed for such repairs. After the Master has made his report, another petition must be presented for confirming it, and for the allowance of the sum reported to be necessary out of the rents of the lunatic's estates, and for a reference to the Taxing Master to tax the costs of the application. It was referred to the Master to inquire and certify whether it would be proper and for the benefit of the lunatic's estate, having a due regard to his interest therein (which the Master was directed to inquire into and ascertain), that the premises mentioned in the petition should be repaired, and what would be the probable expense thereof (*o*).

In a case where the Master had reported that it was absolutely necessary, and for the benefit of the lunatic's estate, to expend sums of money in rebuilding a farm house, it was ordered that the sums expended in rebuilding should be considered and taken as a charge upon the lunatic's real estate (*p*).

On an application to confirm the Master's report, approving of certain repairs to freehold houses, the property of the lunatic, at the expense of his personal estate, it was objected on the part of the next of kin, that if the application were granted, it would have the effect of changing personal into real estate to the advantage of the heir-at-law, and the prejudice of the next of kin. Lord Cottenham, C., said that if the money were

(*n*) *Ex parte Ludlow*, 2 Atk. 407.

(*p*) *In re Harris*, 9 Aug. 1827.

(*o*) *In re Child*, 23 April, 1827.

laid out in the purchase of land, or what would amount to the same thing, in building a farm house, it would be right that the sum so laid out should retain its character of personalty; but the case before him was one of ordinary and necessary repairs; and he made the order as prayed (*r*).

Before the general orders of October, 1842, the Court would not, except in a very special case, supported by affidavits, make a general order authorizing the committee of a lunatic's estate to act, under the opinion and advice of the Master in the management of the estate (*s*). But now, the Master in Lunacy is at liberty, without special order, to receive any proposal, or conduct any inquiry as to the managing, setting, or letting the estate, or otherwise respecting the person or property of any lunatic, and may report thereon as he shall see fit; but such report shall be submitted for confirmation, as was then done with respect to such reports when made upon special reference (*t*).

According to the former practice a discretion was sometimes given by the Lord Chancellor to a Master in Chancery, with respect to the management of the concerns of a lunatic. Thus, it was referred to the Master to inquire and certify whether a good defence could be made to a bill filed in Chancery against the lunatic, and in case the Master should be of opinion that a good defence could be made to the suit, then the Lord Chancellor ordered the committee of the estate to defend the same accordingly; but, in case the Master should be of opinion that a good defence could not be made thereto, then the committees were to be at liberty, with the approbation of the Master, to enter into such compromise with the plaintiffs in the suit as the Master should approve of, and to make and execute, with the approbation of the Master, all such acts and deeds as he should deem necessary with reference thereto, and that, in all minor matters which might occur in the affairs and concerns of the lunatic, in which the Master might not think it necessary to have any specific directions, the committees were to be at liberty from time to time to submit matters to him: and the

(*r*) *In re Budcock*, 4 My. & Cr. 440; 3 Jur. 694.

(*s*) *In re Cooper*, 1 My. & Cr. 33.

(*t*) 13 Order, 27 Oct. 1842.

Master was to be at liberty to allow and direct what should be done in all such cases, and that the committees should be at liberty either to act upon his opinion or advice, without further order, or to obtain the Master's report from time to time, as he should think fit (*u*).

In another case, there was a reference to the Master to inquire and certify whether it would be for the benefit of the lunatic and her estate, to accept a particular sum in full satisfaction of the claim carried in before the Master in a cause in Court (*v*). The report, stating that it would be proper to accept the sum offered, was confirmed; and it was ordered, that the committee should be at liberty to carry the compromise into effect, and to execute such deeds and other instruments approved by the Master, as might be requisite (*w*).

In another case, the Master was directed to inquire whether it would be proper and for the benefit of the lunatic's estate, to defend any actions or suits commenced against him; and whether it would be proper to institute any and what suits or proceedings at law or in equity, to recover back sums of money paid by the lunatic; and whether it would be proper to refer certain demands against his estate to arbitration, and upon what terms and conditions; with liberty for the Master to state special circumstances touching the inquiries directed to be made by him (*x*).

Shares in a Company.—By the Companies' Clauses Consolidation Act, 1845, if any shareholder of any company, constituted by special act, be a lunatic or idiot, such lunatic or idiot may vote by his committee, and such vote may be given either in person, or by proxy (*y*).

The control of the committee over a lunatic's estate, will not generally be interfered with, except in case of improper conduct on the part of the committee; and, therefore, a petition

(*u*) *In re* Sir G. O. P. Turner,
9 Aug. 1827.

(*v*) *In re* Bird, 9 March, 1827.

(*w*) *In re* Bird, 23 April, 1827;
see form of a petition in a case of
his kind, in the Appendix.

(*x*) *In re* Baker, 20 June, 1827.

(*y*) 8 & 9 Vict, c. 16, s. 79; see
s. 3. The acts 11 Geo. 4 & 1 Wm.
4, cc. 60, 65, extend to funds trans-
ferrable in books kept by any Com-
pany.

presented on behalf of a Joint Stock Company in which a lunatic was a shareholder, praying for a reference, whether it would be for the benefit of the lunatic, that the amount due in respect of his shares, by virtue of a call which had been made by the company, should be paid out of his estate, which petition was opposed by the committee, was dismissed with costs (z).

SECTION XI.

Of superseding the Commission of Lunacy.

THE only lawful object of a commission of lunacy being the protection of the person of the lunatic, and the management of his property during the continuance of his mental incapacity, it necessarily follows, that, on his return to a sound state of mind, and capacity to manage his own affairs, he is entitled to have the commission superseded, and to have his property restored to him, with an account of its application by his committees.

A lunatic, on recovering his senses, ought to be delivered out of custody on inspection by the Lord Chancellor, and on the examination of witnesses as to his state of mind (a).

A petition for such purpose should be in the name of the person who has recovered a sound mind, and not in the names of his nearest relations (b). When such a petition is presented, a time will be appointed for the appearance of the party, before the Chancellor, in order that he may be examined; but without strong evidence of his sanity and capacity, given by medical men, or other persons competent to form an opinion upon the subject, the Chancellor will not supersede a commission (c).

(z) *In re Hitchon*, Law J. 1846, 25.
Ch. 126.

(a) *Ashe's case*, Freem. C. C. 259. 383; 1 Coll. on Lun. 324; *ante*,

(b) *Ex parte Stanley*, 2 Ves. sen. p. 93.

(c) See Harr. Ch. Pr. by Newl.

On a petition to supersede the commission of lunacy, a preliminary objection was taken on behalf of the committee of the person, that the lunatic, who was in this country when the commission was executed, was, at the time of the application, residing at Paris, having escaped from the custody of the persons who had had the charge of him pending the appointment of a committee. Lord *Lyndhurst*, C., knew of no instance where a commission had been superseded without the appearance of the lunatic. The party is not found lunatic upon affidavits; the inquiry takes place under the commission; witnesses are examined *vivâ voce*, the party himself appearing and being examined by the jury. It would be extraordinary if, under such circumstances, the commission could be superseded upon the evidence of affidavits merely. A case might be conceived in which a commission might be superseded without the party's actually appearing in Court; for instance, the case of a person labouring under some physical infirmity, so that he could not be brought up. But the party must still be in such a situation as that he may be examined by persons acting under the authority of the Great Seal. It seems questionable whether if a party who has been found lunatic, escapes to a foreign country, and while resident there is pronounced by a competent tribunal to be of sound mind, the Lord Chancellor will give such credit to that decision as to entertain a petition by the party to supersede the commission without requiring him first to return to the jurisdiction for the purpose of being personally examined. In this case it was arranged that the party should return, upon an undertaking on the part of the committee of the person, that if the petitioner would return to this country, no restraint should be imposed upon him, unless by the Lord Chancellor's direction (*d*).

In one case, the lunatic having recovered, and been examined in Court, the commission was superseded on the petition of the lunatic and his two committees; and their recognizance was ordered to be vacated, the lunatic declaring himself satisfied with the account they had rendered (*e*). In another case the

(*d*) *In re Dyce Sombre*, 1 Phill. C. C. 436; Law J. 1845, Ch. 335.

(*e*) *Ex parte Bampton*, Mos. Ch. Cas. 78.

commission was only suspended for some months, to see if the party was perfectly recovered, because he had often relapsed, and had been found by the inquisition a lunatic with lucid intervals (*f*).

In another case, where a party who had been found a lunatic by inquisition stated in his petition, that he had perfectly recovered his sound mind for four years past, and was desirous that the commission should be superseded, and the costs of all parties taxed and paid:—it was ordered, that the commission of lunacy issued in the matter should be superseded, and that the Master should tax the costs of all parties in the lunacy, which were ordered to be raised by a sale of part of the lunatic's stock standing in the name of the Accountant-General in trust in the matter, who was ordered to transfer the stock belonging to the lunatic into the joint names of himself and his wife, and to pay the dividends which were due thereon to the husband (*g*). And sometimes, in the order for superseding a commission, the accounts of the committees will be directed to be passed, and the costs in the lunacy, after having been taxed, to be paid by the lunatic out of his estate, in case the balance in their hands be insufficient for that purpose (*h*). A commission may also be superseded on the recovery of the lunatic, before the appointment of committees (*i*).

When on an application to supersede a commission of lunacy, the evidence respecting the sanity of the party is conflicting, an issue will sometimes be directed, even though the commission is supported by two former verdicts, if the case is of such a nature as to render it proper to be again submitted to the consideration of another jury (*k*).

Lord *Eldon*, C., observed, that there was no part of the jurisdiction in lunacy more unpleasant, and requiring greater caution, than that of determining when a commission shall be superseded; for, though a safe conclusion may upon evidence be arrived at in establishing lunacy, it is very difficult to deter-

(*f*) *Ex parte Ferrars*, Id. 332;
see *Anon.* 1 Vern. 155.

(*g*) *In re Walker*, 31 March, 1828.

(*h*) *In re Wells*, 14 Dec. 1830.

(*i*) *In re Edwards*. 26 March,
1814.

(*k*) *Ex parte Holyland*, 11 Ves.

10.

mine when the mind is restored; depending upon the circumstance, whether the party has been led to those topics upon which it was affected. And his Lordship said, that he could not agree to Lord *Thurlow's* proposition, either with respect to property, or with reference to an application to supersede a commission, that, where lunacy is once established by clear evidence, the party must be restored to as perfect a state of mind as he had before, to be proved by evidence as clear and satisfactory. For, there might be frequent instances of men restored to a state of mind inferior to what they possessed before; and yet it would not be right to support commissions against them. On the other hand, where lunacy had been satisfactorily established, particularly where there is a tendency to do great personal harm to others, the absence of the disorder ought to be proved by the evidence of persons having competent knowledge upon the whole subject (*l*).

A commission of lunacy may be superseded, if the party has been irregularly found to be a lunatic (*m*). A commission of lunacy was superseded on the petition of the party against whom it had been issued, complaining of improper conduct in the witnesses examined on the inquisition, and alleging the subsequent recovery of the petitioner (*n*).

Commissions have also been superseded, because the lunacy had not been carried back by the inquisition so far as was warranted by the evidence adduced before the commissioners and the jury (*o*).

After the Lord Chancellor has made an order for superseding a commission of lunacy, the party must be restored to the government of himself and his property, by a grant under the Great Seal. The instrument obtained for such purpose, recites the inquisition and the grant of the custody to the committees, and that the party has been examined in Chancery, and found to be of sound mind; in consideration whereof such grant is determined, and the committees are required not to intermeddle in future with the late lunatic, who is restored

(*l*) *Id.* 11; see *ante*, p. 58.

(*m*) *Ex parte Roberts*, 3 Atk. 6.

(*n*) *Ex parte Glover*, *In re Glover*,

1 Mer. 269.

(*o*) *In re Wooller*, and *In re Warren*, *ante*, pp. 124, 125.

to the government of himself and all his property by the *supersedeas*.

A doubt seems to have been formerly entertained, whether the Crown's interest is such, that, after the death of the lunatic, or his recovery, there must be an *Ouster le Mayne* (*p*) sued out, as was done in the case of an idiot, or whether the Crown's interest is avoided now by the death or recovery of the lunatic (*q*). Upon which Lord *Redesdale*, C., remarked, with respect to the recovery of the lunatic, it is clear, that, in practice, he is not restored to the possession of his property, but by an order of the Court; and for manifest reason, for, how otherwise it is to be ascertained that he has recovered? And his Lordship added, that, in all the cases he could find, the question put by Staunford had never received a direct decision (*r*).

SECTION XII.

Of the Delivery of the Possession of the Estates, and Transfer of the Funds belonging to Lunatics, after their Death.

WHERE, on the death of a lunatic, the title of the heir is uncontested, the Court may make an order to give possession to him; but, if that be contested, the person claiming ought to be left to recover it in the ordinary course of law; and the question must then be decided by the competent jurisdiction. If, on the death of a lunatic, there is no dispute as to who is the heir, and as such entitled to the lands; and an application be made to the Court, stating the death of the lunatic, and

(*p*) See *Les termes de la Ley*, tit. *Ouster le maine*, Staunf. Pr. Reg. c. 24; 3 Bl. Comm. 256.

(*q*) Staunf. Pr. Reg. p. 37.

(*r*) 2 Sch. & Lef. 437.

praying that a committee may be ordered to deliver possession to the heir, the Court ought to make such order, and ought not to put the heir to his ejectment, or permit the committee to retain the possession by disputing the fact of heirship. The Court, after the death of the lunatic, will not permit the committee to interfere with the title to the possession, but considers him like any other person in the situation of a bailiff, manager, or receiver; as one who is to act merely officially, and is not to interfere in any manner with the rights of third persons, on the determination of his authority as committee. And the committee must act with the most perfect impartiality, and will neither be allowed as committee to put himself or any body else into possession as heir, without the authority of the Court; nor to abandon the possession as committee, and take it as heir, for that would be using his office of committee to give himself possession (a).

In a case where a person who had been appointed committee of a lunatic continued in possession of his estates after his death, contending that he was entitled under a settlement and a will, neither of which he stated; and a petition was presented by a husband and his wife (the latter of whom claimed to be heiress-at-law of the lunatic), praying that they might be put into possession of the estate, and have the title deeds handed over to them or lodged in Court, and that the committee might account for the rents and profits from the time of his appointment as committee; and in case the Court should not order possession to be given to the petitioners, that a receiver might be appointed. Lord *Redesdale*, C., would not order possession to be given to either party, but considered it as retained in the hands of the committee; and an order was made to restrain the committee from receiving any part of the rents of the estates (of which he obtained possession as such committee), and from interfering with any part of the estates by virtue of his authority as committee, until further order: with liberty for such committee to proceed at law, or in equity, in such manner as he should be advised, to assert his claim to

(a) *In re Fitzgerald*, 2 Sch. & Lef. 440; see *Beer v. Ward*, Jac. Rep. 194.

such estates, as heir-at-law of the lunatic, or under any settlement or will by which he claimed to be entitled. And the petitioners were to be at liberty in like manner to proceed at law, or in equity, to assert their claims to such estates, in such manner as they should be advised. And in case either party should not proceed for such purposes before the first day of the following Term, the other parties were to be at liberty to make such application in the matter of the lunacy as they should be advised (b).

Although the Chancellor sitting in lunacy has no jurisdiction after the death of the lunatic, to try who are his heirs-at-law, and as such entitled to his real estate; yet upon the consent of all parties, the Master has been directed to report upon the subject, and under special circumstances an order has been made for delivering possession to the persons who had been reported by the Master to be the lunatic's heirs-at-law; and another person claiming as heir has been also allowed to inspect deeds remaining in the Master's office.

Under a settlement made in the year 1771, upon the marriage of the late Dowager Duchess of Norfolk, her real estates were limited after the death of herself and her husband, and in default of issue to her right heirs. The Duchess was found a lunatic under a commission issued against her in 1816, and in the same year the usual reference was made to the Master to approve of committees, and to inquire who were her heirs-at-law and next of kin; and also whether it would be fit and proper that a receiver should be appointed of her real estate, and if so, to approve of a proper person. By a subsequent order, advertisements were directed for persons claiming to be heirs-at-law or next of kin of the lunatic, or claiming any estate or interest in reversion or remainder in her estates, to come in before the Master and make their claims. A receiver was appointed. The Master reported that four persons were the co-heirs of the lunatic: claims were made before him on behalf of other persons, particularly by Robert Jackson, who

(b) *In re Fitzgerald*, 2 Sch. & Lef. 431.

contended that he was the heir-at-law of the lunatic, and went into evidence in support of his claim; it was stated by him that he understood that the decision of the Master as to the claims of the co-heirs would not be conclusive, except with reference to the appointment of committees; and therefore that he took no objections to the report, and suffered it to be confirmed without excepting.

The Duchess died in 1820 without issue; upon which petitions were presented by the persons who had been reported to be her co-heirs, praying that they might be let into possession of her real estates. Jackson was at that time in South America, but the petitions were opposed on his behalf; when it was stated that he would return to England, and prosecute his claim to the estate, although his agents in England were not authorized to take legal proceedings for that purpose. The petitions stood over for some time, and Lord *Eldon* afterwards said, that his jurisdiction in the lunacy was gone, but that it appeared that he must consider the persons who had all along been treated as heirs, to be entitled to the possession; and that he had jurisdiction to order the possession to be given up to them; which he did, declaring that the Court did not think proper to go into the question, whether the one party or the other was entitled. Jackson afterwards returned to England, when a commission of bankrupt issued against him; and, on the petition of him and his assignees, an order was made, directing that they and their agents should have liberty to inspect the title deeds and writings relating to the estates of the lunatic, deposited in the Master's office. In reference to this order, Lord *Eldon*, C., afterwards observed, "that he thought that as the deeds were still in the Master's office, he had authority to order an inspection of them, and stated that his object was that it might be established who was the heir-at-law, and then either to make an order affecting the estates, or if he had not jurisdiction to do that, to make such order as might be proper with respect to the title deeds" (c).

(c) *Ex parte Clarke, In re Duchess of Norfolk*, Jac. Rep. 593; see *In re Pearson*, 1 C. P. Coop. 314, ante, pp. 25, 26.

Jackson and his assignees, in consequence of certain parish registers being inaccurate and obliterated, afterwards presented a petition, praying liberty to inspect vaults and coffins, as against the persons who had been reported heirs, and that the latter might be restrained from opposing any obstacle to the petitioners in making such inspection. Lord *Eldon* expressed a doubt, whether he had jurisdiction to make such an order, and the petition stood over (*d*). An order was afterwards made, that the petitioners and their agents, at their own expense, might be at liberty, at all seasonable times within a limited period, to open the vaults or graves of a particular family, and to inspect all the coffins therein, and the plates on the same, and to take copies of the inscriptions as they might be advised or find necessary, and to replace the said coffins in the said vaults; and it was directed, that such inspection should not take place but in the presence of some persons appointed by the parties reported to be heirs, and upon due notice being given to them (*e*).

The Master, by a subsequent report, found that parts of the property of the Duchess belonged to the persons who had been previously found to be her co-heirs-at-law; and on the confirmation of such report, the receiver of the estates was ordered to deliver to them, as tenants in common, the possession of the estates mentioned in the report, as belonging to them as such co-heirs-at-law; and it was ordered, that the several tenants of such estates should attorn and pay to the co-heirs the arrears of any rents then due in respect of such estates, in the proportions therein mentioned (*f*).

After the death of the lunatic, if the probate of his will has been granted to his executors, or letters of administration taken out by his next of kin, the fund in Court belonging to the lunatic will generally, upon the petition of the executors or administrators, be ordered to be transferred to them after

(*d*) Jac. R. 596.

(*f*) *In re* The Duchess of Nor-

(*e*) *In re* The Duchess of Norfolk, *folk*, 23 May, 1827.

5 August, 1822.

payment of the costs of the committees and the next of kin of the lunatic.

On the petition of the committees of the estate of a lunatic and production of letters of administration with the will annexed of the lunatic, it was referred to the Master to tax the petitioners and the next of kin of the lunatic their costs, to be paid out of the fund in the Accountant-General's name; and an order was made that the Accountant-General should transfer the stock, or the residue thereof, (in case of a sale for payment of costs), into the name of the administratrix of the lunatic, and also pay to her the residue of the cash in his hands, in case the same should be more than sufficient to pay costs, to be applied by the administratrix in a due course of administration. And it was ordered that the bond entered into by the committees should be delivered up by the Clerk of the Custodies to be vacated and cancelled (*i*).

And in another case, on the petition of a husband and wife (the committees of the estate of a lunatic), the latter being the sole executrix named in the lunatic's will, and having proved the same, it was ordered that the Accountant-General should transfer into the name of the executrix, the stocks standing in his name in the matter, and pay to the executrix the dividends to accrue on such stock until such transfers, to be respectively applied by the executrix according to the lunatic's will (*k*).

An order of the Lord Chancellor on the death of a lunatic tenant for life of a fund in Court, discharging her committee to whom the dividends had been ordered to be paid, was not received as evidence of the death of the party in the Rolls Court (*l*).

On the petition of the committee of the estate of a deceased lunatic, being also the residuary legatee and sole executor named in his will, the committee of his person, who had been allowed by the lunatic to retain certain diamonds and jewels

(*i*) *In re Perry*, 8 Nov. 1828;
see forms of petitions and orders in
the Appendix.

(*k*) *In re Hahn*, 4 Aug. 1829.
(*l*) *Berry v. Usher*, 4 Jur. 5.

in her possession, was ordered to deliver up the same to the committee of his estate, without prejudice to any question as to the rights of any party to the same (*m*).

No order in lunacy can be made upon a petition preferred after the death of the *non compos* by his next of kin, to obtain a distribution of his personal property; but administration must be granted to some person entitled under the statutes (*n*), against whom, as well as the committee, a bill in equity may be filed to compel distribution.

The next of kin of a lunatic deceased preferred a petition to Lord *Bathurst*, for a distribution of the personal property, consisting of Bank Annuities, standing in the name of the Accountant-General in the matter of the lunacy; whereupon his Lordship directed the Master to inquire who were the heirs-at-law and next of kin of the lunatic. The Master having made his report, application was made to Lord *Thurlow* for the funds to be transferred; but his Lordship was of opinion that it was necessary for a bill to be filed to authorize the Court to take an account of the lunatic's debts, and to administer his effects. A bill was accordingly filed, when the Chancellor held that the report in the lunacy was not a sufficient authority on which to ground a decree, as the Great Seal in respect of lunacy acts as a commissioner under a signet; and, therefore, he ordered the Master to inquire who were the heirs-at-law and next of kin of the lunatic, and to advertize in the *Gazette* and other papers for them to come in and prove their affinity by a time fixed, or to be excluded, and to make his report in the *cause* (*o*). So, also, where it was moved on behalf of the committee of a lunatic, that it might be referred to the Master to ascertain who were the next of kin of a lunatic, in order that a sum of money, his property, remaining in the hands of the committee, might be distributed according to the statute—The Lord Chancellor of Ireland refused the reference to the Master, and said, there must be a bill filed by one of the next of kin of the

(*m*) *In re Jodrell*, 17 March, 1832. Car. 2, c. 10.

(*n*) 21 Hen. 8, c. 5; 22 and 23

(*o*) *Wigg v. Tiler*, 2 Dick. 552.

lunatic against the committee, for an account of the property, and then a reference would be made to the Master to ascertain who were the persons entitled to such sum (*p*).

Upon a bill being filed by the next of kin of a lunatic, for a distribution of his personal property, funds in the hands of the Accountant-General may be transferred to the credit of the cause, on the petition of the executor or administrator of the lunatic (*q*).

It has been decided, that, where the Chancellor had allowed the whole income of the lunatic for his maintenance, after his death his committee was not liable to account, unless he appeared to have acted fraudulently.

A bill was filed by the administrator of a lunatic against the administrator of the committee of the lunatic's estate, for an account of the personal estate, and of the rents and profits of the real estate of the lunatic received by such committee. To this was pleaded the several orders in the lunacy, whereby the custody of the lunatic was committed, and particularly an order that 200*l. per annum* should be applied out of the lunatic's estate towards payment of incumbrances affecting it, and the residue be allowed towards the maintenance of the lunatic, and the management of his estate. Lord *King*, C., observed that there was no fraud in obtaining the order; it was referred to the Master; pursuant to which a report was made. Where such order had been made for the allowance of the profits of the estate of the lunatic, and so often renewed, it was reasonable to suppose the committee to have been induced to take the less care of the accounts; and that it would be extremely hard, unless some great fraud appeared, to oblige such committee, and much more his representatives, to account or refund. A decree, and much more an interlocutory order, if gained by collusion, might be set aside on petition, and *à fortiori* by bill; but in this case there was no collusion. The plea was allowed to stand for an answer, without liberty to except. The matters

(*p*) *Ex parte Gilbert*, 1 Ball & Bea. 297; see *In re Presse*, 3 Moll. 94. (*q*) *In re Machen*, April, 1808; 1 Coll. on Lun 321.

in difference being afterwards compromised, the bill was dismissed without costs (*r*).

The authority of the case last cited was questioned by Lord *Brougham*, C., in a case of a similar nature, in which, after the death of the lunatic, an order was made directing an account against the committees of all sums expended by them in maintaining the lunatic and supporting his establishment, the effect of which was to charge the committees with every sum ordered to be allowed to them, which they might be unable to shew was actually expended by them for the above purposes. But on appeal to the Privy Council, it was decided that after the death of the lunatic, his personal representatives cannot by petition to the Lord Chancellor, sitting in lunacy, obtain from the committee of the person an account of his expenditure of the allowance for the maintenance of the lunatic. But it seems that such an account may, under some circumstances, be obtained by a bill in the Court of Chancery (*s*).

On a bill for an account of savings made by a wife as committee of the person of her husband, a lunatic, out of the allowance made to her as such committee—a plea that she had duly discharged the duty of committee was overruled (*t*). For, as the bill stated, that the defendant was committee of the lunatic—it was to be assumed, the contrary not being charged, that she duly performed the duties of that office; and, therefore, the averment in the plea could not be taken as the statement of a new fact, and on that ground the plea was bad (*u*), as well as on another.

The committee of the person of a lunatic is entitled to the savings out of the sum allowed for the lunatic's maintenance, and the same do not form part of the lunatic's personal estate. A devisee for life, and B., remainderman in fee, were directed by the testator to apply "any sum not exceeding 400*l.* a-year for the maintenance of testator's eldest son, a lunatic; and

(*r*) *Sheldon v. Fortescue Aland*,
3 P. Wms. 104, 111, n. (*b*); see
ante, p. 165.

(*t*) *Stephenson v. Holmes*, 3 Law
J. N. S. Ch. 41.

(*u*) See *Billing v. Flight*, 1 Madd.

(*s*) *Grosvenor v. Drax*, 2 Knapp,
82. 230.

my wish is, that whoever shall at any time be in possession of my Londonderry estate shall, during the life of my said son, apply the said sum annually for his maintenance, the same to be a charge on the said estate." The testator in a subsequent part of the will, stated, that he left the management of the lunatic to the direction of A. and B. After A. and B. had died, the Court fixed the allowance at 280*l.* a-year. Upon the lunatic's death, his administrator applied for the savings accumulated by reason of 400*l.* a-year, not having been expended on the lunatic:—But the Court held, that the owner of the estate, and not the administrator, was entitled to the difference between the 400*l.* a-year and the allowance to the lunatic (*v*).

In a case, where a mother had received for the period of thirty years the income belonging to her daughter, who was of unsound mind, and applied part of it in her maintenance and support, and invested part of the surplus in the funds in the daughter's name; an account of the money received and paid by the mother on account of her daughter was decreed against the personal representatives of the mother, on a bill filed by the committees of the daughter, who had been found by inquisition after the mother's death, to have been a lunatic for a period commencing before the testator's death.

In that case, a testator bequeathed to his wife the sum of 2100*l.* in trust for the sole use of his daughter, who was also entitled for life to part of his real estates under his will, and to other parts thereof as one of his coheirs; and the mother, on the testator's death, entered into the possession, and received the rents of the real estate, to which the daughter was entitled, supported her, and purchased in her name the sum of 10,000*l.* 3½ *per cent.* Reduced Annuities, but no accounts had been rendered either of the legacy of 2100*l.* or the other surplus income; and on the death of the mother, there was standing in her own name the sum of 47,000*l.* like annuities. Shortly after the death of the mother, the daughter was found to have been of unsound mind, from the year 1795; and a bill was

filed on her behalf by her committees against the executors of the mother, for an account of the money she had received in respect of her daughter's estates.

The Vice Chancellor referred it to the Master to inquire and state to the Court what annual sum was proper to be allowed for the maintenance, support, and establishment of the lunatic, from the death of her father to the death of her mother, having regard to the fortune and income of the lunatic during that period, and to all the circumstances of the case; and, having regard to the result of that inquiry, it was ordered that the Master should inquire what portion of the sum of 47,000*l.* 3½ *per cent.* Bank Annuities, and of the sum of 4130*l.* which had been laid out in the purchase of lands by the mother, ought to be considered as belonging to the mother of the lunatic, and what part thereof ought to be considered as belonging to the lunatic; but the same was to be without prejudice to a question of election, which was raised in the case, on account of some benefit given to the lunatic by her mother's will (*w*).

When the wife permits her pin-money to run in arrear for a considerable time, and she is during the whole period supported by her husband, it will be presumed, that, in consideration of such support, she waived her claim to pin-money; and upon surviving her husband, she will only be permitted to claim arrears for one year prior to his death (*x*).

The husband is not bound to account for the income of his wife's separate estate, which she has permitted him to receive (*y*).

If it appears that the wife demanded her pin-money without success, or if she lived separate from her husband, and without any allowance (*z*), she will be entitled to all arrears due at her

(*w*) *Gaitskell and Others v. Scott and Others*, Reg. Lib. (A.) 1831, 1213-15.

(*x*) *Townsend v. Windham*, 2 Ves. sen. 7; *Peacock v. Monk*, Id. 100; *Offley v. Offley*, Pre. Ch. 26; *Parkes v. White*, 11 Ves. 225; *Thrupp v.*

Harman, 3 My. & K. 513; see Roper on Husband and Wife, Chap. xvii. s. 1.

(*y*) *Smith v. Lord Camelford*, 2 Ves. jun. 698.

(*z*) 1 Ves. sen. 267; *Fowler v. Fowler*, 3 P. Wms. 354.

husband's death ; for, against express demands for payment, or where there is neither cohabitation nor maintenance of the wife by her husband, a presumption cannot be raised that she intended to give up her claim to pin-money, so that she will be entitled to all arrears up to her husband's death (*a*).

An annuity given to the separate use of the wife, is discharged by payments made to the use of her husband, and sums allowed him in account ; the circumstances of the transactions being such as to satisfy the Court, that the mode of dealing between the person who was bound to pay the annuity, and the husband was, with the acquiescence of the wife, or with her authority, either express or implied (*b*).

Such presumption cannot arise where the wife is a lunatic, and therefore incapable of consenting or waiving her right (*c*).

Although satisfaction of arrears of pin-money cannot be presumed against a lunatic wife, on the ground of her consent, or acquiescence in her husband's retainer of them, there may be a presumption against her of satisfaction by reason of payments made by her husband in discharge of her debts, to the payment of which pin-money is applicable (*d*).

In directing an account against the estate of the husband for pin-money received by him, the Master has been sometimes ordered to take into consideration the extraordinary expense sustained by the husband in consequence of the wife's insanity.

An information filed by the Attorney-General on behalf of a lunatic, stated, that, by a decree at the Rolls made on the 10th May, 1780, it was ordered that several sums of stock should be transferred to the Accountant-General, and the interest and dividends thereof paid to a lady during her life, for her separate use, and on her death all parties interested were to be at liberty to apply to the Court. The lady, by a power of attorney duly executed by her, dated 14th December, 1780, authorized her husband to receive the dividends then

(*a*) *Ridout v. Lewis*, 1 Atk. 269. Bea. 39.

(*b*) *Bartlett v. Gillard*, 3 Russ. 149.

(*d*) *Howard v. Digby*, 2 Cl. & Fin. 660.

(*c*) *Brodie v. Barry*, 2 Ves. &

due, or which should become due on those funds. The bill further stated, that, before and on the 14th December, 1780, the lady was of unsound mind, and had ever since continued so; that the husband, by virtue of the letter of attorney, received the dividends; that he was since dead, having appointed the defendants executors of his will; that the lady had been found a lunatic by inquisition, without lucid intervals, from December, 1783, and that the defendants had been appointed committees of her person and estate. The bill prayed an account of the dividends received by the late husband under the power of attorney. Lord *Thurlow*, C., ordered the parties to proceed to a trial at law on an issue, whether the lady was a lunatic at the time she executed the power of attorney, and that the jury should endorse on the *postea* at what time she became so. After a second trial the jury found that she was a lunatic when she executed the power of attorney.

On the cause coming on for further directions, the Lord Chancellor ordered it to be referred to one of the Masters to take an account of the dividends and interest accrued on the sums of stock and money received by the husband, or by any other person by his order or for his use, and to take an account of what sums of money were laid out and expended by the husband for the better and more comfortable support of the lunatic and his wife. And it was ordered, that the said Master should consider whether any and what allowance ought to be made to the estate of the husband in respect thereof. And that what should be so allowed be deducted out of what should be found due from the estate of the husband upon the account, before directed, of interest and dividends received by him (*e*).

The Duchess of Norfolk was entitled, under the trusts of the settlement made in contemplation of her marriage with the Duke in 1771, to two annuities of 700*l.* and 300*l.*, charged in the nature of pin-money upon estates to which the Duke was entitled for his life. The Duke received all the rents and profits of the estates and maintained the Duchess according to her rank, up to the time of his death in 1815. In 1816, the

(*e*) *Attorney-General v. Parnter*, C. C. 409; Reg. Lib. A. 1792, fol. 3 Bro. C. C. 440; S. C. 4 Bro. 696.

Duchess was found to have been a lunatic without lucid intervals, from 1782, and she continued so until 1820, when she died intestate. Her personal representative claimed from the personal representative of the Duke, arrears of the pin-money, from 1782 to 1815. It was held by *Shadwell*, V. C., that as the Duchess was incapable of consenting to, or acquiescing in the Duke's retaining her pin-money, his estate was accountable for all the arrears of it. (*f*).

But this decree was reversed by the House of Lords, who held that the personal representative of the Duke was entitled to set off any payments made by the Duke in respect of the pin-money, against the claim for the arrears by the Duchess during her lifetime, and that the personal representative of the Duchess was not entitled to *any* arrears of her pin-money (*g*).

SECTION XIII.

Of the Conversion of the Real and Personal Estates of Lunatics, as between their Heirs and Personal Representatives.

THE claims arising after the death of lunatics between their heirs and personal representatives, in consequence of the alteration or investment of their property by their committees, have occasioned several decisions, all of which cannot be reconciled with each other.

In cases of lunacy, the first care of the Court is the maintenance of the lunatic, and, after that, it is a rule not to vary or alter the property of the lunatic, so as to affect the right of succession to it (*a*).

(*f*) *Earl Digby v. Howard*, 4 Sim. 588.

(*g*) *Howard v. Earl Digby*, 2 Cl. & Fin. 634.

(*a*) *Ex parte Annandale*, 1 Ambl. 81; see *ante*, pp. 254, 260.

The law of Scotland, on this

point, seems conformable to that of England, for the tutor of an idiot cannot by his mode of investing the funds, or by leading an adjudication, alter the rule of succession. Moveable property invested by him in heritage, continues to be re-

In the orders made by persons charged with the custody of lunatics, there is one general principle, though not without some possible deviation, that the general object of the attention of the administrator is solely and entirely the interest of the lunatic himself; and with regard to the management of the estate solely and entirely the interest of the owner, without looking to the interest of those who, upon his death, may have eventual rights of succession; and nothing could be more dangerous or mischievous than for him to consider how it would affect the successors. There will always be among them an emulation of each other, and their speculations, if the administrator were to engage in them, would mislead his attention, and confine his observation as to the interest of the only person he is bound to take care of. The next of kin would contend for a short allowance. The heir-at-law would have no interest to contend for a small allowance out of the rents and profits, but might have an emulation against the next of kin; and, therefore, where the next of kin would contend for a narrow allowance, the heir would insist on a large one. Therefore, the Court has always shut out of view all consideration of eventual interests, and considers only the immediate interest of the person under their care (*b*). But, whatever tends towards ordinary improvement, it is strictly the duty of the administrator to do, considering only the immediate interest of the proprietor of the estate; but great care must be taken that nothing extraordinary is to be attempted; as, estates to be bought, or interests to be disposed of. Alteration of property is, as far as possible, to be avoided consistently with the idea of preserving the interest of the proprietor (*c*).

The person entrusted by the Crown with the custody of the persons and properties of lunatics, ought not wantonly to

garded as personal *quoad* succession, and *vice versâ*; Ross. 31 Jan. 1793; Mor. p. 5545: *Graham and Others v. Hopetown*, 6 March, 1798, Mor. 5599; *Morton v. Young*, 11 Feb. 1813; Fac. Coll.; see

1 Stair's Inst. by Brodie, p. 55, n. (*g*).

(*b*) *Oxenden v. Lord Compton*, 2 Ves. Jun. 72.

(*c*) Id. 73.

change the nature of the property : for, if the lunatic recovers, he may reasonably expect to find his property in the same state as when he became of unsound mind ; and, although the persons who at his death would be his heirs-at-law and next of kin have no interest in the property, yet the holder of the Great Seal, representing the Crown in this respect, should not without cause do any act which would have the effect of altering their respective rights (*d*).

The committee is not authorized to purchase real estate with savings, and so alter the nature of the property ; for, land so purchased will be considered as personalty. Thus, where the committee of a lunatic, out of the rents and profits of the real estate, purchased lands, which were conveyed to the lunatic, on whose death a question arose between the heir and administrator, who was to have the benefit of the purchase—the Court decreed an account of the personal estate, and the lands purchased to be sold, and the money to be divided as personal estate amongst the next of kin (*e*).

Though it be very true, that the Court of Chancery will not order the personal estate of a lunatic to be turned into real estate, yet there have been applications to that Court to lay out part of his personal estate in repairs, or even upon improvements of his real estate ; and the Court has allowed it, if the next of kin at that time, who, if he were dead, would be entitled to his personal estate, do not shew any reason against it ; and such an order of the Court has been even held binding upon other persons who did not consent to it at the time it was made, but happened to be the next of kin of the lunatic at his death (*f*).

(*d*) *Per* Sir *E. Sugden*, Lord *Leitrim v. Enery*, 6 Ir. Eq. R. 363.

(*e*) *Awdley v. Awdley*, 2 Vern 192 ; S. C. 2 Freem. 114.

The decree declared, “ that it was not in the power of any committee to alter the nature of a lunatic’s estate.” But it does not appear that the decree ordered the lands to

be sold ; the plaintiff was to have his share paid so far as there was personal estate to pay, and the purchased lands were to stand charged with the remainder ; *Reg. Lib.* 1690, A. fol. 69.

(*f*) *Sergeson v. Sealey*, 2 Atk. 413.

But, whenever personal estate is laid out in improvements on the real estate, it is necessary that the committee should first obtain an order of the Court (*g*).

Where a committee or guardian is entrusted with the care of an estate, and has abused that trust with a view of changing the quality of the estate, to serve his own interest, there arises an equity to undo the act tortious in that way; there is no rule of equity upon a less ground than that. Perhaps the Court, where guardians or committees have, without order, taken upon themselves to change the property, will, particularly where there is a cause in Court, consider it as a matter of fraudulent management, for that is the ground upon which the Court must proceed (*h*). Thus, where the committees of the estate of a lunatic, who were entitled to the real property upon his death, purchased timber for repairs, notwithstanding there was sufficient timber on the estate proper for the purpose. Lord *Hardwicke*, C., observed, that committees of the real estate of a lunatic might exercise the same power over it, in regard to cutting timber for repairs as any discreet owner might do, but in that instance, they appeared to have acted merely with a view to their own interest; and he therefore ordered them to make good the amount to the personal estate (*i*). It is clearly established, that where a person is acting *bonâ fide* for a lunatic or an infant, without any intention to prefer either representative, there is no equity between them; there is no rule in equity to undo the act, unless there has been a breach of trust in the committee or guardian; therefore, where a stranger had cut down timber tortiously, it was refused to be restored to the estate, because there was no abuse of confidence (*k*).

There is no equity for the heir, as against the personal representatives, to have the surplus money arising from the sale of timber felled by the order of the Court, restored after

(*g*) *Ex parte Marton*, 11 Ves.

397; *Ex parte Hilbert*, *Id. Anon.*

10 Ves. 104; see *ante*, pp. 274, 275.

(*h*) *Ex parte Bromfield*, 1 Ves.

jun. 462; S. C. 3 Bro. C. C. 510.

(*i*) *Ex parte Ludlow*, 2 Atk. 407; *ante*, p. 275.

(*k*) 2 Eden, 154, note; 1 Ves. jun. 462.

the death of the lunatic. Thus, where timber, growing on the estate of a lunatic, was cut under an order of the Court, founded on the Master's report, that it would be for the benefit of the lunatic, and was sold, and the produce was paid into the Bank on account of the lunatic, but there was no direction as to the future application. After the death of the lunatic, the heir-at-law petitioned for the money, and was resisted by the next of kin. Lord *Thurlow*, C., said, that the Court ought to be very reserved in changing one species of property into another, and to do it only on pressing occasions; and when it is done, the only ground upon which it can be given out to the one party or the other, must be an equity so distinct, as to govern it upon the proper rules of law. The jurisdiction in lunacy not being the *forum* that ought to decide in nice cases, on account of the difficulty of getting the decision reversed, his Lordship said, that the question should come before the Court by bill, drawn like a case, and the answer in the same way, merely stating the sum raised by timber, the order under which it was cut, and that an equity arose for the heir to have the produce paid to him (*l*).

A bill having been accordingly filed by the heir-at-law of the lunatic, against his next of kin, it was decided, that the heir had no claim to the surplus produce above the purposes for which the timber was felled, there was no equity between the real and personal representatives, since both claimed as volunteers; and the legal right ought therefore to decide to whom the property belonged (*m*).

There is no equity between the representatives even in a case where what was done under the order turned out to be clearly wrong. Thus, where so much of an estate was to be sold as would pay debts, and the bulk was sold, and there was a surplus, which, if the order had been strictly pursued, would never have been money, but real estate; it happened that by the order not being followed distinctly, or guarded sufficiently in the execution, that which would have been land was in fact

(*l*) *Ex parte Bromfield*, 1 Ves. jun. 453; S. C. 3 Bro. C. C. 510; 2 Dick, 762.

(*m*) *Oxenden v. Lord Compton*, 2 Ves. jun. 69; S. C. 4 Br. C. C. 231.

money. Lord *Clamden* thought, nothing arose upon that, but that the parties ought to take their respective rights as they find them (*n*).

Where the produce of timber cut from the lunatic's estate had been applied in redeeming the land tax, it was decided, that there was no equity on the part of the next of kin to be repaid the money. Upon the petition of the heir-at-law, and one of the next of kin of a lunatic, it was ordered, that the petitioner should be at liberty to contract for the redemption of the land tax on the lunatic's estate: the land tax was redeemed accordingly; the consideration being stock transferred out of the fund in Court, arising principally from the sale of timber which had been cut under a former order, and constituting part of the lunatic's personal estate. A petition which was presented by some of the next of kin of the lunatic after his death, stated, that his personal estate had been diminished by the sum transferred to the commissioners; and, as in the orders, authorizing such transfers, no direction was contained, that the land tax so redeemed should merge in the estates on which it was charged, the land tax, having been purchased out of the personal estate, ought to be considered as such, and divisible among the next of kin; and it prayed, that the land tax so redeemed might be declared a charge upon the real estate, for the benefit of the petitioners and the other next of kin. Lord *Eldon*, C., said, the opinion he expressed must be subject to a bill, if the party thought proper to file one, as he had no direct jurisdiction; and he dismissed the petition, repeating his offer of a bill, which, being declined, his Lordship added, for the satisfaction of the parties, that there could be no chance upon a bill of an alteration in his opinion (*o*). But Sir *A. Hart*, C., said, that he conceived that Lord *Eldon* would have come to a different result if the money to be paid for the land tax had been a fund of general personality; for it appeared, that soon after the passing of the Land Tax Act, a standing order was made in matters of

(*n*) *Flanagan v. Flanagan*, cited
1 Bro. C. C. 500, 512; and see
2 Ves. jun. 77.

(*o*) *Ex parte Phillips*, 19 Ves.
811; and see *Ware v. Polhill*, 11
Ves. 257.

lunacy, whereby it was directed—"That, in all cases of redeeming the land tax, the order shall be accompanied by a declaration of trust, that the land tax redeemed shall be considered as personal estate of the lunatic, and transmissible as such" (*p*).

Where a committee had entered into the contracts for the redemption of land-tax charged on the lunatic's estates, which the Court ordered to be carried into execution, and the Accountant-General to make the necessary transfer of part of the stock belonging to the lunatic for the purpose; and by such order it was declared, that the land-tax redeemed should be considered personal estate of the lunatic, to the amount of the value of the stock directed to be transferred on the day of transfer; and that the same should be transmissible as such, and not of the nature of real estate; and the committee had executed a deed, by which it was declared, that his name was used in such contracts in trust only, for the lunatic; and that the committee should stand possessed of the land-tax in trust only, for the lunatic, his executors, administrators, and assigns, as part of the personal estate of the lunatic, for the amount of the value of the stock transferred. After the death of the lunatic, the declaration of trust was ordered to be delivered to his administrators, and the committee of his estate was ordered to deliver to his next of kin and administrators the several contracts and certificates for redemption of land-tax charged on the lunatic's estates, and to execute to their nominees a proper assignment of the benefit and advantage of such contracts, in respect of the consideration for redemption, and of the yearly sum equal to the amount of the land-tax redeemed, and of all arrears thereof, from the lunatic's death (*q*).

In one case, after the death of a lunatic, a reference was directed to the Master to inquire what proportion of the fund in Court had arisen from the sale of the freehold and copyhold estates of the lunatic, and what proportion thereof constituted

(*p*) 1 Beatty, 275. On inquiry at the Lunatic Office, no reference to the standing order alluded to could be obtained; particular

orders to the same effect have been made; see *ante*, p. 260.

(*q*) *In re Cotton*, 20 June, 1827.

a part of his personal estate, and to distinguish what part thereof had arisen from the rents of the estates, and from the timber felled thereon, and what had arisen from the sale of the leasehold estate of the lunatic (*r*)—the Master reported, that the whole was personalty; whereupon it was ordered to be transferred to the administratrix of the lunatic (*s*).

Where a lunatic, being seised *ex parte paternā* of estate A., and *ex parte maternā* of estate B., the latter being subject to a mortgage; and the produce of timber cut upon A. had been applied in discharge of the mortgage upon B., it was held, upon a question between the heirs, that A. was not to be recouped (*t*). And it was held in another case, that a charge on a lunatic's estate, falling in to him as representative of his sister, should sink for the heir-at-law (*u*).

It is very clear, that a person, becoming entitled to an estate subject to a charge for his own benefit, may, if he chooses, at once take the estate, and keep up the charge. Upon this subject, a Court of Equity is not guided by the rules of law. It will sometimes hold a charge extinguished, where it would subsist at law; and sometimes preserve it, where at law it would be merged. The question in ordinary cases is upon the intention, actual or presumed, of the person in whom the interests are united. In most instances it is, with reference to the party himself, of no sort of use to have a charge on his own estate; and, where that is the case, it will be held to sink, unless something has been done by him to keep it on foot. Where no intention is expressed, or the party is incapable of expressing any, the Court, if called upon to exercise a discretion, will probably consider what is most advantageous to him (*v*.)

Lord *Manners*, C., is reported to have held, that, where it is necessary for a lunatic to elect under a will, as in a case where a personal legacy was first given, and afterwards in the same

(*r*) *In re Hucks*, 24 Jan. 1815.

(*s*) *Id.* 25 July, 1815.

(*t*) *Per* Lord *Eldon*, in *Ex parte Phillips*, 19 Ves. 123.

(*u*) *Compton v. Lord Oxenden*, 4 Br. C. C. 397.

(*v*) *Forbes v. Moffatt*, 18 Ves. 390; see *Price v. Gibson*, 2 Eden, 115; *Donisthorpe v. Potter*, *Id.* 162; *S. C.* Ambl. 600; *Wyndham v. Earl of Egremont*, *Id.* 753; 2 Sim. & Stu. 345, 369; 1 Sim. 298.

will a real estate with a charge upon it, the Court has power to elect for him; and if the Court chooses the real estate, it will continue the charge paid off as a lien on it for the lunatic's next of kin; and said that Lord *Eldon*, was of the same opinion (*w*).

It seems to be the principle of the Court to do nothing wantonly, or unnecessarily, to alter the lunatic's property, but, on the contrary to take care, for his sake, that, if he recover, he shall find his estate as nearly as possible in the same condition as he left it, applying the property in the mean time, in such manner as the Court thinks it would have been wise and prudent in the lunatic himself to apply it in case he had been capable (*x*). In conformity with the above principles, where the personal estate of a lunatic has by the order of the Court been applied for the benefit of, or to discharge incumbrances on his real estate, directions have been usually given to preserve the money so applied as personalty. Thus, where a lunatic held a lease for lives subject to a mortgage made by his ancestor, and the Master had reported that it would be for the benefit of the lunatic that the committee should pay off the mortgage out of the personal estate—Lord *Hardwicke*, C., ordered that the committee should pay off the mortgage out of the estate of the lunatic, and that the mortgagee should assign over the mortgage in trust for the lunatic, his executors, administrators, and assigns, and that such trustee should declare the trust accordingly (*y*).

The Dowager Duchess of Norfolk, before her lunacy, by virtue of a power contained in her marriage settlement, charged the estates comprised in it, by way of mortgage, with a sum of 5000*l.*, and created a term of years for securing it: the money was paid to a trustee, and directed to be held for her separate use. In consequence of the death of her husband without issue, the estates, which belonged to the Duchess before her marriage, stood limited by the settlement to herself for life, with the usual limitation to trustees to preserve contingent remainders,

(*w*) *In re Marriott*, 2 Molloy, 516.

(*y*) *In re Degge*, March, 1743,

(*x*) *Ex parte Whitbread*, *In re*

stated in 1 Beatty, 270.

Hinde, 2 Mer. 102.

remainder as she should appoint, remainder to the heirs of her body, remainder to her right heirs.

The Master, upon a reference to him, had reported that it would be proper that the charge of 5000*l.*, as it bore a higher rate of interest than could be made of the surplus rents of the lunatic's estate, should be paid off, and the term securing it assigned to a trustee, to be disposed of as the Lord Chancellor, during the lunacy, should direct, and subject thereto in trust for the lunatic and her heirs, and to attend the inheritance. The presumptive heirs-at-law of the Duchess presented a petition to confirm this report. Another petition was presented by the persons who, in the event of her death, would be her next of kin, praying that the charge might be kept on foot as personal estate, without prejudice to the question by whom, or out of what fund the same shall be ultimately paid—Lord *Eldon*, C., said, this question cannot be determined during the life of the lunatic, it may never arise. The term must be assigned to a trustee, in trust to attend the inheritance, or for the lunatic, her executors, administrators, and assigns, as shall hereafter be determined in the matter of the lunacy, or in any suit to be instituted for that purpose (*z*). On the death of the Duchess, it was agreed that the petitions should be brought on again by consent, for the purpose of taking the opinion of the Court, on the question whether the mortgage was to be paid off for the benefit of the heirs. And it seems to have been decided, that, as the charge was not a personal debt of the Duchess, that the heir-at-law was not entitled to be relieved from it; and even, admitting that the sum borrowed, was a debt as against the separate estate of the Duchess (she having entered into a covenant for payment) (*a*), and that she had died possessed of any separate estate, yet it would depend upon whether the personal security was meant to be the primary security, or only collateral (*b*).

(*z*) *Ex parte* Earl Digby, *In re* Duchess of Norfolk, 1 Jac. & Walk. 640; see *Newcombe v. Newcombe*, 3 Ir. Eq. R. 421, 422; Lord *Leitrim v. Enery*, 6 Ir. Eq. R. 366.

(*a*) See *Bullpin v. Clarke*, 17 Ves.

365; *Stuart v. Viscount Kirkwall*, 3 Madd. 387.

(*b*) *Ex parte* Digby, *In re* Duchess of Norfolk, Jac. Rep. 235. Sir *E. Sugden*, C., holds, the proper time to decide whether the heir-

Where part of the lunatic's personal estate was directed to be applied in payment of a mortgage on his real estate—Lord *Eldon* ordered, that the term should be assigned to a trustee, without prejudice to the claims of the real and personal representatives; but said, that there was no doubt that it would be deemed personalty on the lunatic's death (*c*).

In another case, an order was made for sale of sufficient stock standing in the Accountant-General's name in the matter of a lunacy for discharging a mortgage on the lunatic's estate, and for payment of the sum due to the mortgagees upon their executing a reconveyance, such payment to be without prejudice to the persons by whom, or the estates out of which, the same should be ultimately borne or paid (*d*).

Where a real estate had descended on a lunatic, subject to a mortgage which was exonerated by application of the lunatic's personalty, in no way derived from or connected with the descended estate, it was held, that the mortgage money was a charge on the real estate, for the benefit of the next of kin. An estate subject to a mortgage, having descended to a lunatic, and a bill of foreclosure having been filed by the mortgagee, an order was made in the matter of the lunacy, on the petition of the committee, that it should be referred to the Master, to inquire and report, whether it would be for the interest of the lunatic that the mortgage debt, with interest and costs, should be paid, taking an assignment of the same, so as to prevent the property of the lunatic being altered; and if so, to report what was due thereon for principal, interest, and costs. The Master afterwards reported, that it would be for the interest of the lunatic that the mortgage should be paid off, which, with interest and costs, was afterwards done by the committee, out of a fund in Court belonging to the lunatic, and the mortgage premises were conveyed to the committee, her heirs, executors, and assigns. After the death of the lunatic, a bill was filed by the

at-law or the next of kin of the lunatic are to be entitled to the benefit of payments made out of his estate, is when the payments are made; Lord *Leitrim v. Enery*, 6

Ir. Eq. R. 357.

(*c*) *Ex parte Hinde*, June, 1822; Ambl. Rep. 706, note by Blunt.

(*d*) *In re The Earl of Lisburne*, 4 November, 1815.

next of kin and administrator of the lunatic, against the defendants, her heirs-at-law, for an account of the personal estate, and that the mortgage might be declared to be part thereof, and be raised and distributed accordingly. Lord *Manners*, C., decreed, that the assignment of the mortgage, made to the committee of the lunatic, was in trust for her co-heirs, the defendants, and that the bill should be dismissed as to the mortgage and assignment. But, on a petition of rehearing, Sir A. *Hart*, C., reversed that decree, so far as it dismissed the bill of the next of kin, and declared, that they were entitled to have so much of the lunatic's personal estate, as was applied in discharge of the mortgage, considered as a *lien* on the real estate and raised accordingly. An account was directed of the amount of the principal sum paid in satisfaction of the mortgage, with interest from the death of the lunatic (*e*). Sir E. *Sugden*, C., has expressed an opinion that the original decree in this case was right (*f*).

So also where a lunatic being possessed of a freehold lease for lives, and one of the lives having dropped, an order to renew and pay the fine and charges out of the personal estate was made; directions were also given, that if the lunatic should die during his lunacy, the remaining interest in the new lease, after the determination of the lives then subsisting, should be considered personal estate for the benefit of the next of kin. And a similar order was afterwards made upon the dropping of another life (*g*).

Where a lunatic was entitled to the equity of redemption of an estate subject to two mortgages for terms of years, which were paid off in his lifetime out of the savings of his estate, and the terms were, by the order of the Lord Chancellor, assigned to attend the inheritance: on the petition of the next of kin, after the death of the lunatic, the Court declared the trustee to whom the terms had been assigned, a trustee for the next of kin of the lunatic, to the extent of the mortgage money and interest, and directed an account accordingly; but, on a

(*e*) *Weld v. Tew*, 1 Beatty, 266.

(*g*) *Ex parte Degge*, 4 Bro. C. C.

(*f*) Lord *Leitrim v. Enery*, 6 Ir. 235, note (*a*); Beatty, 271.

Eq. R. 368.

petition of rehearing by the heirs-at-law of the lunatic, that order was reversed (*h*).

The committee and heir presumptive of a lunatic, who was absolute owner of a freehold estate, subject to a charge of 900*l.* paid off the charge out of his own monies, and had it assigned to a trustee for him. He subsequently applied to the Court for leave to apply the surplus rents of the estate towards payment of the charge; but there were then judgments affecting the lunatic personally, and the application was refused. When the judgments were paid, the committee paid off the charge out of the surplus rents, without any order, but was allowed the amount in passing his account; it was held that the next of kin of the lunatic had no equity to have it kept alive for their benefit.—For where a person seised in fee of an estate, pays off an incumbrance affecting it, such payment is presumed to have been made in exoneration of the estate, but the law is exactly the reverse when a tenant for life does such an act. In answer to the objection, that the payment had been made without the authority of the Court it was said, that what was done amounted to the same thing, and that where a thing would have been ordered by the Court to be done, if an application had been made for that purpose, the want of such order shall not prejudice it when done (*i*).

It has since been decided that a charge upon an estate of which a lunatic was seised in fee simple, and which was paid off, out of the savings of the rents of the real estate, is to be considered as having been paid off for the benefit of the heir-at-law, and is not to be considered as still subsisting, and part of the lunatic's personal estate for the benefit of his next of kin (*k*).

If the lunatic had a large real estate subject to mortgages not of his own creation, and a small personal estate, and several younger children unprovided for, as the real estate would go to the eldest son, if the lunatic did not recover and dispose of it otherwise, the Chancellor acting as the lunatic if sane, and

(*h*) *Ex parte Grimstone*, Ambl. 706; and 4 Bro. C. C. 234; see *Newcombe v. Newcombe*, 3 Ir. Eq. R. 414; *Lord Leitrim v. Enery*, 6 Ir. Eq. R. 369.

(*i*) *Newcombe v. Newcombe*, 3 Ir. Eq. R. 414.

(*k*) *Lord Leitrim v. Enery*, 6 Ir. Eq. R. 357.

if a provident man, would act, would not in such a case diminish the personal estate for the purpose of relieving the real estate, but would leave the eldest son to take it *cum onere*, for this would be a proper arrangement of the estate, having regard to the lunatic's circumstances and family (*i*).

It is a well established principle in Courts of equity, that money directed to be employed in the purchase of land, and land directed to be sold and turned into money, are to be considered as that species of property into which they are directed to be converted; and this, in whatever manner the direction is given: whether by will, by way of contract (*k*), marriage articles (*l*), settlement or otherwise, and whether the money is actually deposited, or only covenanted to be paid, and whether the land is actually conveyed, or only agreed to be conveyed (*m*). The quality of real or personal estate thus impressed by the instrument, will continue unless the possession was united with the absolute title under the uses of the instrument in a proprietor *competent to elect*, under whom both representatives claim; or, if standing out in a third person, the *cestui que trust* has by declaration or some act indicated an intention to keep it as it is, for which purpose a very slight act is sufficient (*n*). It is obvious that persons under disabilities are incapable of making any election; and if the interest of the lunatic should not require an election, the Court will not make any, merely to favour that class of representatives who would be benefited by it; thus, where an estate devolved upon a lunatic, under

(*i*) *Per* Sir E. Sugden, C., Lord *Leitrim v. Enery*, 6 Ir. Eq. R. 365.

(*k*) *Stead v. Newdigate and Others*, 2 Mer. 521.

(*l*) *Ripley v. Waterworth*, 7 Ves. 435.

(*m*) See *Fletcher v. Ashburner*, 1 Bro. C. C. 499; see *Smith v. Claxton and Others*, 4 Madd. 484.

(*n*) *Pulteney v. Lord Darlington*, 1 Br. C. C. 223; 7 Br. P. C. 530; *Fletcher v. Ashburner*, 1 Br. C. C. 497; *Hickman v. Bacon*, 4 Br. C. C. 333; *Wheldale v. Partridge*, 5 Ves.

388; 8 Ves. 235; *Thornton v. Hawley*, 10 Ves. 129; *Ware v. Polhill*, 11 Ves. 257; *Biddulph v. Biddulph*, 12 Ves. 161; *Kirkman v. Miles*, 13 Ves. 338; *Triquet v. Thornton*, Id. 345; *Shard v. Shard*, 14 Ves. 348; *Walter v. Maunde*, 19 Ves. 424; *Stead v. Newdigate*, 2 Mer. 521; *Langley v. Sneyd*, 1 Sim. & Stu. 45; *Attorney-General v. Halford*, 1 Price, 426; *Amphlett v. Parke*, 1 Sim. 275; *Burton v. Hod-soll*, 2 Sim. 24.

the will of a testator who intended it to pass as money only, under a direction to sell; although a party competent to act for himself might have elected to take the property as land, yet it was held to go to the lunatic's representative as personalty, and as if it had been actually converted (*o*).

In another case, where a testator by will gave to his wife all his ready money and bank notes which he should have about his person, or at his residence, at his death, and gave specifically to others his exchequer bills, stock, &c., and became insane two months before his death, and during that time two large sums of money which had been paid at his house, were laid out for him in stock and exchequer bills—Sir *J. Leach*, V. C., said, that it was the duty of those who managed the testator's affairs, during his incapacity, to act as a provident owner would do, and not to leave large sums of money unemployed. That there was no equity between legatees; and, as between them, property duly converted must be taken in the same state and character in which it is found at the death of the testator (*p*).

The principle of not altering the right of succession to the property of a lunatic has been adopted in several enactments of the Legislature. By the statute 11 Geo. 4 & 1 Wm. 4, c. 65, s. 21—it is provided, that, upon the death of the lunatic all such sums of money arising by fines or premiums on the renewal of leases of the lunatic's property, or so much thereof as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatic, be considered as real estate, unless such lunatic shall be tenant for life only, and then the same shall be considered as personal estate. The statute of 11 Geo. 3, c. 20, (which is repealed by the above statute) contains a similar provision (*q*). And, by the statute of 11 Geo. 4 & 1 Wm. 4, c. 65, s. 29, it is enacted, that on any sale, mortgage, charge, incumbrance, or other disposition which shall be made in pursuance of that act, the person whose estate shall be sold, mortgaged,

(*o*) *Ashby v. Palmer*, 1 Mer. 301 ;
see *Van v. Barnett*, 19 Ves. 102 ;
Seeley v. Jago, 1 P. Wms. 389.

bridge and Others, 4 Madd. 495.

(*q*) See *post*, Chap. viii. s. 1 ;
4 Br. C. C. 235, n.

(*p*) *Browne and Others*, v. *Groom-*

charged, incumbered, or otherwise disposed of, and his or her heirs, next of kin, devisees, legatees, executors, administrators, and assigns, shall have the like interest in the *surplus* which shall remain, after answering the purposes therein mentioned, of the money so raised, as he, she, or they would have had in the estate by the disposition of which such monies shall be raised, if no such disposition had been made; and such monies shall be of the same nature as the estate so disposed of: and power is given to the Lord Chancellor to make orders for the due application of such surplus monies. The statute 9 Geo. 4, c. 78, s. 2 (which is repealed by the last mentioned act) contains a similar provision, and by the 43 Geo. 3, c. 75, s. 2, which is in like manner repealed, it is provided that any surplus of money to be raised by any sale under that act shall be applied and disposed of in the same manner as the estate sold would have been applied (*r*).

It is conceived that some important and difficult questions may arise under the acts of Parliament last cited, for it often happens that a person previously to becoming a lunatic, has made a will, disposing of different estates to different individuals, and, during the lifetime of the lunatic, judicial notice cannot of course be taken of the contents of his will, for the lunatic may recover and revoke it, or it may never be established, and if there are several testamentary papers it may not be known which is his will. Suppose, therefore, that a particular estate, devised to one individual, should be sold or charged by the Lord Chancellor's order for discharging the lunatic's debts, or for paying the expenses incurred in the lunacy, or for any purposes for the general benefit of his estate, would the party to whom the estate sold or charged had been devised in the event of the lunatic's will being established after his death, be entitled to call upon the other devisee or heir of the lunatic, to make any contribution out of the other parts of the lunatic's estates remaining unsold, for the benefit of the party whose interest had been defeated by such sale or mortgage?

(*r*) See *post*, Chap. viii. s. 2.

It may be doubted whether the statute (*s*) in question authorizes the Lord Chancellor to qualify his order for sale or mortgage, by inserting a declaration in it, that such sale or mortgage shall not, as between the person who would otherwise have become entitled to the estate sold or mortgaged, and the persons who shall, on the lunatic's death, become entitled to the other parts of his estates, prejudice the former beyond the proportion which he ought to bear of the sum raised; and that the persons who shall become entitled to the other parts of the lunatic's estates shall pay their proportions of the sum raised. Assuming that the Lord Chancellor has no power to make such a declaration, or having it, that he omits to do so (*t*), the question would be, whether the disappointed devisee or heir could compel, by a bill in equity, the persons who became entitled, on the lunatic's death, to the other parts of his estate, to contribute any and what proportions of the money which had been so raised, for the purpose of giving to the disappointed devisee or heir some equivalent for the interest devised to him, and sold or charged.

The decisions establishing the general rule in equity, that if a person has two funds to which he may resort, he shall not disappoint another person who can only resort to one of the funds (*u*), appear to have some analogy to the case now under consideration. Contribution is even allowed at law in some cases, upon the principle that one has paid that to which all are liable (*v*).

The right and duty of contribution is founded on doctrines of equity, and does not depend upon contract (*w*).

It may be assumed, in the absence of proof to the contrary,

(*s*) 11 Geo. 4, and 1 Wm. 4, c. 65, ss. 28, 29.

(*t*) 11 Ves. 278.

(*u*) *Aldrich v. Cooper*, 8 Ves. 382; *Trimmer v. Bayne*, 9 Ves. 209; *Carter v. Barnadiston*, 1 P. Wms. 505; *Henningham v. Henningham*, 2 Vern. 355; and see 1 Eq. Cas. Abr. 113—117.

(*v*) *Collins v. Prosser*, 1 Barn. &

Cress. 688.

(*w*) *Lawson v. Wright*, 1 Cox, C. C. 275; *Dering v. Earl of Winchelsea*, Id. 318; 2 Bos. & Pull. 270; see 3 Bligh, 590; *Walker v. Preswick*, 2 Ves. sen. 622; and Suppl. by Belt, p. 449; see 3 Rep. 12 b; Vin. Abr. tit. "Contribution."

that all the devisees named in a will are equally the objects of the testator's regard, although the benefits conferred on them are unequal; and, if his presumed intention be allowed any weight, it should seem, that the principle of contribution ought to be applied to the case under consideration; for it would be hard that one only should, at the option of a third party, bear the whole burthen which the testator probably would have divided amongst all the objects of his bounty; but, at the same time, it must be admitted, that some of the cases stated in the previous part of this section are against the admission of such a principle.

Primâ facie a testator must be presumed to intend that all his legacies should be equally paid, and the *onus* is upon those who contend for a priority to shew that the testator meant to give a preference to a particular legatee (*x*).

It is quite clear that a sale (*y*), or mortgage (*z*), or even a contract (*a*), made by a testator when of sound mind, defeats his will *pro tanto*; but whether the order of the Lord Chancellor acting under an act of Parliament on behalf of a lunatic, will have the same effect as an alienation by the testator himself, is a question upon which the author has found only one decision directly in point.

A testator by his will, dated in 1811, devised Black-acre to A. and White-acre (which was of equal value) to B. In 1815 the testator was found to be a lunatic by inquisition. The Master reported that it would be for the benefit of the lunatic that certain parts of his real estate should be sold for the payment of debts, the personal estate being altogether insufficient for the purpose: White-acre was accordingly sold by the order of the Lord Chancellor. On a bill filed by B. against the other persons taking interests under the will for a fair propor-

(*x*) *Brown v. Brown*, 1 Keen. Show. P. C. 154.
275.

(*y*) *Sparrow v. Hardcastle*, Ambl. 224; 3 Atk. 799; *Arnald v. Arnald*, 1 Br. C. C. 401; 2 Dick. 545.

(*z*) *Hall v. Dunch*, 1 Vern. 329, 342; *Earl Lincoln's case*, 1 Eq. Cas. Abr. 411: 2 Freem. 202;

(*a*) *Ryder v. Wager*, 2 P. Wms. 328; *Cotter v. Laver*, Id. 622; *Bennett v. Earl of Tankerville*, 19 Ves. 170; see 7 Wm. 4, & 1 Vict. c. 26, s. 23; *Farrar v. Earl of Winterton*, 5 Beav. 1; 6 Jur. 204.

tion of the sum produced by the sale : it was held that there was no equity stated by the bill, and that the plaintiff was not entitled to any compensation. The act of the Court being considered as if it had been the act of the testator (*b*).

In a case where the Master had reported that it would be for the benefit of the lunatic's estate that certain furniture should be sold, and the petition prayed a sale of this furniture—It appeared, that the lunatic, when sane, had made a will, by which he bequeathed this furniture to a particular individual ; and one point submitted to the Court was, whether, under such circumstances, the Court would interfere to defeat the bequest by directing the property to be sold. Lord *Lyndhurst*, C., said, that he would not defeat the intention which the lunatic had manifested when sane ; and, therefore, that no direction should be given for the sale of the furniture (*c*).

In a case where a lunatic was seised in fee of an advowson, which had become vacant by the death of the incumbent, and a petition was presented, stating that no heir-at-law or next of kin of the lunatic could be found ; and that the lunatic, sometime previous to her lunacy, made her will ; and that the petitioner had reason to believe that such will contained directions for the presentation to the living, and dispositions of the advowson and other property of the lunatic ; and that the petitioner was materially interested under the same will ; and prayed that the will and deeds of the lunatic might be deposited in the Master's office ; and that the Master might be directed to open the lunatic's will, and to apprise the Lord Chancellor of the contents thereof, with reference to the presentation to the said living ; and for the appointment of committees ; and that the Master, in making such appointment, might have regard to the dispositions of the property of the lunatic contained in the will. An order was made directing the Master to cause advertisements to be inserted in the *London Gazette* and other papers, for all persons claiming to be heir or heirs-at-law and next of kin of the lunatic to

(*b*) *Holmes v. Goodworth*, Law J. 1829, Ch. 128.

(*c*) *Ex parte Haycock, In re Jones*, 5 Russ. 154.

come in before him and prove their kindred. The usual order for depositing the deeds and will was made, but the Lord Chancellor refused to direct the Master to ascertain the contents of the lunatic's will (*d*).

In the absence of special clauses for the purpose, the effect of a railway act is not to alter the course of devolution of property without the consent of the owner; and therefore, if a company, by virtue of their act, contract with an incapacitated person for the purchase of lands, the money is to be considered as real and not as personal estate. A testator devised a piece of land by his will, and soon after became imbecile; while the testator was in this state the Midland Counties Railway Company took the piece of land for the purposes of the railway, and the value of it was ascertained to be 440*l.* by a jury, summoned in pursuance of the act. Before the money was paid into the bank, in pursuance of the railway act, the testator died: it was held that the land was not converted so far as the testator's will was concerned, and that the 440*l.* belonged to the devisees of the land (*e*).

(*d*) *In re Warren*, 26 Feb. 1833. 209; 1 Coll. C. C. 80; 8 Jur. 138;

(*e*) *Midland Counties Railway Co. v. Oswin*, Law J. 1844, Ch. 3 Railw. Ca. 497; see Shelford on Railways, 204—208, 2nd ed.

CHAPTER VI.

OF THE ALIENATION OF ESTATES BELONGING TO LUNATICS.

SECTION I.—*Of alienation by matter of record.*

II.—*Of alienation under the act for the abolition of fines and recoveries.*

III.—*Of alienation by deed.*

IV.—*Of proceedings in Courts of Equity, for avoiding the deeds and contracts of lunatics and persons of weak minds.*



SECTION I.

Of Alienation by Matter of Record.

It may probably be assumed, that by the laws of every civilized country, in theory if not in practice, the consent of the parties to every private contract is a necessary ingredient.

In order to ascertain what persons possess a moral power of binding themselves by contracts, it is necessary to consider the nature of consent, which is the essence of every contract, and implies physical power and a moral power of consenting, as well as a deliberate and free use of such powers (*a*). Therefore, the absence of any of those capacities in either of the parties to a contract renders it void. It is obvious, that all persons, either totally destitute of reason, or so far bereft of it as not to have a will governed and directed by reason, or who are incapable of comprehending the nature of obligations, have no power, during the continuance of their infirmities, of giving

(*a*) Puffendorf's Law of Nature and Nations; Barbeyrac's note 1, B. iii c. 6, s. 3; Grotius de Jure Belli et Pacis, Lib. 2, c. 11, s. 5;

see Pothier on Obligations, by Evans, 1 Vol. p. 29; Story's Conflict of Laws, Ch. viii.

a deliberate consent, and consequently of contracting by their own acts.

On these grounds, idiots and lunatics are incompetent to contract by the law of England, which, in this respect, is conformable to the civil law. "*Furiosus nullum negotium gerere potest, quia non intelligit quod agit*" (b).

On account however of the importance which Courts of justice attach to their own records, some matters of record, which idiots and lunatics have been allowed, however improperly, to execute, are considered binding, because the Courts will not permit the records of their own proceedings to be called in question.

Although fines and recoveries have for several years ceased to be part of the common assurances of lands—yet as their effect is still frequently the subject of consideration in relation to past transactions, the time has not yet arrived for omitting this part of the subject.

Idiots, lunatics, and generally all persons of nonsane memory, are incapable of levying fines, and the statute *de modo levandi fines*, (18 Edw. 1, st. 4), requires the parties to a fine to be of full age, of *whole memory*, and out of prison; and another statute (15 Edw. 2), expressly directs that, before fines are passed, the cognizors shall appear personally before the Judges or commissioners, in order that the age, *idiocy*, or other default of such parties, may be judged and discerned by them. But still, if the Judges or commissioners allow them to levy a fine, it can never afterwards be reversed by an averment, that the cognizors laboured under any of those disabilities; because, the record and judgment of the Court being the highest evidence in the law, the cognizors must be presumed to have been capable of contracting at the time; therefore, no averment can be admitted to the contrary. If an idiot or lunatic is permitted to levy a fine, or suffer a recovery, he may declare the uses of it (c). The caption of a fine is conclusive evidence of the capacity of the party, not because the law permits a person who wants understanding to do any act, but, because having

(b) Inst. Lib. 3, tit. 20, s. 8.

(c) 10 Co. 42 b; Hob. 224; Winch. 106.

empowered a person after a previous examination to take the fine, it gives sufficient credit to his certificate, and permits it to be recorded; and the caption of the fine, when recorded, becomes, by fiction of law, conclusive evidence of the legal capacity of the cognizor to support the fine itself, but not for any other purpose (*d*).

An idiot was taken from his guardian, and carried to a place unknown, where he was kept until he had acknowledged the sale of his lands, before a Judge, to another person, and declared the use of the fine to him and his heirs. The cognizor was afterwards found by inquisition to have been an idiot *a nativitate*, and, upon an action by a person who claimed under the fine, the Judges, upon inspection of the idiot, said, that the Judge who took the fine was not worthy to take another: but, notwithstanding, and although the monstrous deformity and idiocy of the party was apparent, yet the fine stood good (*e*).

The declaration of the uses of a fine levied by an idiot was held good, on the ground that it was merely accessory to the fine; and a fine and declaration of uses, after an idiot had been so found by inquisition, was held good, as both the idiot and his heirs were estopped from saying that he was so; for the Court would rather judge the inquisition void, than allow the judicial act and judgment of the Court which accepted the fine to be called in question (*f*).

Where a rule had been granted by the Court of Common Pleas, on a complaint of the heir-at-law, to shew cause why a fine should not be vacated, on the ground that one of the cognizors was a lunatic at the time when it was levied, and the party upon examination by the Court appeared to be a person of good capacity, and able to understand very well the intent of the fine, and the deed declaring the uses, the Court discharged the rule with the costs of the application (*g*).

Where one of several deforciantes had become insane, the Court ordered the fine to pass as to all the other parties, not-

(*d*) 1 Ridg. P. C. 106, 276.

(*e*) *Mansfield's case*, 12 Rep. 124.

(*f*) *Hugh Lewing's case*, 10

Rep. 42; Winch. 106; 2 And. 193;

Piggot on Recoveries, p. 72.

(*g*) *Lister v. Lister*, Barnes, 218.

withstanding the omission of the name of the lunatic in the proceedings (*h*).

Where the estate of a married woman had been regularly sold with the consent of the husband, when of perfectly sound mind, and the conveyance was executed by him, and the purchase-money paid, and some difficulty was subsequently made in allowing a fine to pass, on account of the cognizor being a *feme covert*, and her husband at that time in a state of mental incapacity, the Court on application refused to make any order on the subject; but intimated that there was no objection to the acknowledgment of the fine being taken; adding, *valeat quantum valere potest* (*i*). A person found *non compos* upon inquisition, but alleged to have become of sound mind, was ordered by the Court of Chancery, if he made a settlement, to do so by fine, that a Judge might examine him (*k*).

The rule of Court, which required an affidavit of one of the commissioners, before whom a fine was acknowledged, that the parties are of age and competent understanding, afforded some protection against the frauds formerly practised in obtaining fines from persons under mental disabilities (*l*).

The statute of non-claim on fines, 4 & 5 Hen. 7, c. 24, enacts, that the proclamations thereby directed to be made, shall conclude as well privies as strangers to the same, except women covert, (other than parties to the said fine); and every person then being within age of twenty-one years, in prison, or out of this realm, *or not of whole mind* at the time of the said fine levied, not parties to such fine. If the persons, at the time any

(*h*) *James*, plaintiff, and *Fletcher* and Others, deforciant, 2 Moore & Payne, 265. n. (*a*).

(*i*) *Stead v. Izard*, 1 Bos. & Pull. New Rep. 312; see *Compton v. Collinson*, 1 H. Bl. 334, and *Morreau's case*, 2 Sir W. Bl. 1205; see 3 & 4 Wm. 4, c. 74, s. 91, *post*.

(*k*) *Eliot's case*, Carter, 53; see *Ex parte Wright*, 1 Vern. 154.

(*l*) Hilary Term, 17 Geo. 2; and

Hil. Term, 26 & 27 Geo. 2; see Wils. Rep. 85, 89; Cruise's Dig. tit. 35, c. 4, ss. 46, 48.

In an old case, the commissioners were fined for taking a fine of an infant, to whom a guardian was assigned by the Court, with instructions to bring a writ of error to reverse it; *Petty's case*, Freem. Rep. 78; see Dyer, 221, a, 246, b, pl. 68.

right or title accrued or descended to them, be not of *whole mind*, then it is ordained that their action, right, or title be reserved and saved to them and their heirs, unto the time they come and be of *whole mind*, so that they or their heirs take their said actions, or their lawful entry, according to their right and title, within five years next after that they be of *whole mind*, and the same actions pursue, or other lawful entry take, according to the law; and it is ordained, by the same statute, that all such persons as be under the aforesaid disabilities, *or not of whole mind* at the time of the said fines levied and engrossed, and by that act before excepted, having any right or title, or cause of action, to any of the said lands and other hereditaments, that they or their heirs inheritable to the same, take their said actions or lawful entry, according to their right and title, within five years next after they be of full age of twenty-one years, and of *whole mind*, and the same actions sue, or their lawful entry take and pursue, according to the law.

Though the issue of a tenant-in-tail, who has levied a fine, be *non compos mentis*, yet, being privy, he is barred, not coming within any of the savings in the statute (*m*). But a fine levied by the uncle of an idiot, of lands to which the latter was entitled in fee, was held not to bar the descendant of the uncle claiming as heir of the idiot, for his title as such heir was made through the uncle, who levied the fine, by way of pedigree only (*n*).

If a man of unsound mind makes a feoffment in fee, and the feoffee levies a fine, the heir of the feoffor has five years from the death of the latter, as the person on whom the right first descended after the fine had been levied (*o*).

If there are several disabilities existing in the same person at one and the same time, or there are several disabilities arising at different periods, and one of them succeeds the other without any interval, the fine will not run while any one of these disabilities continues (*p*).

(*m*) 3 Rep. 91, a.

(*n*) *Edwards v. Rogers*, Cro. Car. 524; S. C. Sir W. Jones, 456; 1 Vent. 418.

(*o*) Plowd. 374; Shep. Pract.

Couns. 57, 76; Shepp. Touchst. 33.

(*p*) *Stowel v. Lord Zouch*, Plowd. 375; Dyer, 133; Shepp. Touchst. 32.

On the words of the statute of fines, and on the uniform construction of all the statutes of limitation, it has been decided, that if every disability of the party be once removed, the time must continue to run, notwithstanding any subsequent disability (*q*). And in a case where a fine was set up in order to bar the plaintiff's title, and it appeared in evidence that the person under whom the lessors of the plaintiff claimed, and to bar whom the fine was set up, was of sane mind when the fine was levied, but that he became insane about two years afterwards; it was held, that the time continued to run against him whilst he was in that state (*r*). But it seems that a party, who becomes disabled before the last proclamation of a fine, is within the saving of the act (*s*). In *Dillon v. Lemon* (*t*), it was held by the Court, that the exception in the first branch of the 4 Hen. 7, and the proviso at the end of it, were to be taken together; that being so taken, they did not amount so much to an exception as a saving; the true meaning of which was, that the rights of those persons who were under disabilities, and of their heirs, were saved, as long as the disabilities continued, and five years after, but no longer; and that an heir not being himself disabled, was barred, unless he pursued his right within the five years after it accrued by the death of his ancestor dying under disability.

Any person who has capacity to take by grant, may be a conusee in a fine; and fines levied to idiots or lunatics are valid (*u*).

Idiots and lunatics were disabled from suffering recoveries, as well as from levying fines; though, if an idiot or lunatic suffered a common recovery in person, no averment can afterwards be made that he was an idiot or lunatic, for the same reason, that such averment is not admissible against a fine. But, if an idiot or lunatic be vouched by attorney, such an averment would be

(*q*) *Doe d. Duroure v. Jones*, 4 Term Rep. 300; 4 Taunt. 829; see *post*, Chap. ix.

(*r*) *Doe d. Griggs and Another v. Shane*, 4 Term Rep. 306, note; see Shepp. Touchst. 30.

(*s*) *Stowel v. Lord Zouch*, Plowd. 375; Shepp. Touchst. 31.

(*t*) 2 Hen. Blackst. 584.

(*u*) Shepp. Touchst. p. 7; Vin. Abr. tit. *Fine*, (D. 9).

admitted, upon the same principle, that an averment of infancy may be made against a warrant of attorney, acknowledged by an infant, for the purpose of suffering a common recovery; as the fact of idiocy or lunacy may be tried by a jury, as well as that of infancy (*v*).

Although no averment of idiocy or lunacy can be made against a recovery, where the parties appear in person, yet evidence of weakness of understanding has been admitted to invalidate a deed to make a tenant to the *præcipe* for suffering a common recovery: and the recovery has in that way been set aside (*w*).

And although an averment of idiocy may be made against a vouchee who appears by attorney, yet neither an inquisition finding that a vouchee was not an idiot, or of unsound memory; nor the caption of a warrant of attorney to suffer a common recovery, appearing upon record to have been taken by the Chief Justice of the Common Pleas out of Court; nor a fine acknowledged before the same Chief Justice on the same day with the warrant of attorney, for the purpose of making a tenant to the *præcipe*, are conclusive evidence of the sanity and capacity of the vouchee (*x*). There is an essential difference between the caption of a fine and a warrant of attorney for suffering a recovery; in the former, the law requires a previous examination into the age, condition, and mental capacity, but no examination is by law required previously to the caption of the warrant, although in practice it is done; but the warrant of attorney is the act of the party, a matter *in pais*, and triable by a jury (*y*).

(*v*) *Beverley's case*, 4 Rep. 126, b; Cro. Eliz. 187; *Hume v. Burton*, 1 Ridg. P. C. 16.

The effect of fines and recoveries by lunatics attracted the attention of the commissioners appointed to inquire into the law of England respecting real property; who made several observations upon the subject; see First Report of Commissioners on the Law of Real Pro-

perty, ordered by the House of Commons to be printed, 19 May, 1829, pp. 27, 28.

(*w*) *Wentworth v. Cholmley*, cited 3 Atk. 313; 1 Ridg. P. C. p. 549.

(*x*) *Hume v. Burton*, 1 Ridg. P. C. 204. See *ante*, p. 77.

(*y*) *Thompson v. Leach*, 1 Lord Raym. 313; *Stokes v. Oliver*, 5 Mod. 209; *Ex parte Roberts*, 3 Atk. 308; *Hume v. Burton*, 1 Ridg. P. C. 16.

Where a vouchee had executed a warrant of attorney whilst sane, but, before the passing of the recovery, his intellects became impaired, the Court would not allow the recovery to pass; for, if the vouchee had been restored to his reason, he might have revoked such warrant before the passing of the recovery (z). But, if one of several vouchees became insane, after having executed a joint warrant of attorney, but before the perfecting of the recovery, it was allowed to pass as to all the parties except the lunatic (a).

Recognizances and statutes entered into by a *non compos*, being matters of record, and equivalent to judgments of the superior Courts, can be avoided neither by the parties nor their heirs, executors, or administrators (b).

It was held, that the committee of a lunatic, who had received and paid over rents to a subsequent mortgagee, was not liable in an action for money had and received to a judgment creditor, to whom the land had been delivered by the sheriff under an *elegit* sued out upon a judgment prior to the mortgage, of which judgment there was no docket, though the issue had been docketed, which was insufficient within 4 & 5 Wm. and Mary, c. 20: the mortgagee being entitled to preference, and it being the first duty of the committee to keep down the interest of the mortgages, with the money arising from the rents (c).

The statute of the 10 & 11 Wm. 3, c. 14, after reciting that theretofore fines, common recoveries, and ancient judgments, were reversible at any time without limitation, for error, enacted, that no fine, or common recovery, nor any judgment in any real or personal action, should thereafter be reversed or avoided for any error or defect therein, unless the writ of error, or suit for the reversing of such fine, recovery, or judgment, be commenced or brought and prosecuted with effect within

(z) *Walcott*, Vouchee, 11 J. B. Moore, 307; S. C. 3 Bing. 423; see 1 Burr. 410.

(a) *Vale* and others, Vouchees, 5 Bing. 76; S. C. 2 Moore & Payne, 264.

(b) Perk. s. 24; 4 Rep. 124, a;

10 Rep. 42, b; 2 Inst. 483; Bac. Abr. tit. "Idiot and Lun." (F.). See *Howard v. Digby*, 2 Cl. & Fin. 661, *post*, p. 338.

(c) *Braithwaite* and Another v. *Watts*, 2 Crompt. & Jervis, 318.

twenty years after such fine levied, or such recovery suffered, or judgment signed or entered of record. This statute contains the proviso, "that, if any person who shall be entitled to any such writ of error as aforesaid, shall, at the time of such title accrued, be within the age of twenty-one years, or covert, *non compos mentis*, imprisoned, or beyond seas, that then such person, his or her heirs, executors, or administrators (notwithstanding the said twenty years expired) shall and may bring his, her, or their writ of error for the reversing any such fine, recovery, or judgment, as he, she, or they might have done in case that act had not been made, so as the same be done within five years after his or her full age, discovery, *coming of sound mind*, enlargement out of prison, or returning from beyond the seas, or death, but not afterwards or otherwise." It has been held, under this statute, that a writ of error cannot be brought by the reversioner after twenty years, although his title had not previously accrued (*d*).

Persons born deaf and dumb were allowed to levy fines and suffer recoveries, if, upon examination by the Judges, it appeared that they possessed sufficient sense to understand the nature and effect of such assurances; and persons so affected may also enter into other contracts (*e*).

Although, if an idiot or lunatic has by any neglect or contrivance been permitted to levy a fine, his declaration of the uses thereof will be good at law so long as the fine remains in force; and, if the fine is never reversed, his declaration of the uses will be binding and conclusive on him and his heirs for ever: yet, as the Court of Chancery has, in many instances, compelled persons who have obtained estates under a fine in a fraudulent manner, to reconvey them to those who were really entitled, so that Court will interpose its authority in cases of this kind, and not suffer the declaration of uses of a fine levied by an idiot, or lunatic, to bar his heirs, as no species of fraud can be more evident than that of obtaining a conveyance from a person of this description.

(*d*) *Lloyd v. Vaughan*, 2 Str. Abr. tit. "Fine," (D. 10.) pl. 9, 10; 1257. *Griffin v. Ferrers*, Barnes, 19; *Keys*

(*e*) *Elliot's case*, Carter, 53; Vin. v. *Bull*, Id. 23. See *ante*, pp. 3, 4.

Thus, where a party had been found by two inquisitions a lunatic without any lucid interval, and the defendant had obtained a mortgage, and at last an absolute conveyance at a great undervalue, by deeds, fines, and recoveries. The Court set aside the purchase, and decreed that the defendant should be allowed what he should prove had been paid by him for the use of the lunatic (*f*).

Where fines and recoveries have been obtained by fraud and circumvention from idiots or lunatics, the party taking the benefit of them will be compelled to reconvey to them (*g*), or to their heirs (*h*), on payment of the consideration really advanced. And a settlement by recovery obtained from a person deaf and dumb by his uncle who took an interest under it, was set aside, although reasonable in itself, the party conveying not having had the assistance of an able and faithful relation (*i*).

In another case, the Court relieved against a fine levied upon a possession obtained under a forged deed (*k*). And Lord *Hardwicke*, C., observed, though a fine has been levied, yet, if it has been under circumstances of fraud, the Court ought to prevent the stealing away an estate in that manner (*l*). But it cannot in a Court of law be shewn that a fine levied by a lunatic was void on account of fraud (*m*).

Where the Court of Chancery entertains a doubt as to the capacity of a party at the time a fine was levied or recovery suffered, an issue will be directed to try that fact. Thus, where a lunatic settled his property on himself and his family by deed, fine, and recovery, and a bill was filed for relief against the settlement, and the evidence as to capacity was not satisfactory; the Court directed an issue to try whether the grantor was a lunatic at the time of the execution of the settlement, and

(*f*) *Addison v. Dawson*, 2 Vern. 378.

(*g*) *Welby v. Welby*, Toth. 164; *Wright v. Booth*, Id. 166.

(*h*) *Coleby v. Smith*, 1 Vern. 265.

(*i*) *Ferres v. Ferres*, 2 Eq. Cas. Abr. 695.

(*k*) *Cartwright v. Pultney*, 2 Atk. 381.

(*l*) *Baker v. Pritchard*, alias *Hosier*, 2 Atk. 381.

(*m*) *Morley v. Sherren*, 1 P. & Dav. 126; 8 Ad. & E. 754.

whether with lucid intervals; and, if so, whether the settlement was made in a lucid interval (*n*).

On a bill on behalf of an infant, with the sanction of a Master in Chancery to set aside deeds and recoveries, on the ground of the lunacy of the party at the time he executed them, it was held that the finding of the jury on an inquisition, which overreached that period, afforded a presumption that he was then insane; but there being some evidence that, after the time when the lunacy was stated to have commenced, the party was not of unsound mind, an issue was directed to inquire whether he was of unsound mind at the time of executing the deeds and suffering the recoveries in question (*o*).

The lunatic's trustee, who was alleged to have assisted in procuring the execution of such deeds, though for no personal advantage, was held before the stat. 6 & 7 Vict. c. 85, an incompetent witness on behalf of the parties taking beneficially under the deeds. The wife of the trustee was also held to be equally incompetent (*p*).

On the trial of the issue the jury found in favour of the deeds, whereupon the bill was dismissed with costs of suit and of the issue (*q*).

SECTION II.

Of alienation under the Act for the abolition of Fines and Recoveries.

AFTER the thirty-first day of December, one thousand eight hundred and thirty-three, no fine shall be levied or common recovery suffered of lands of any tenure, except where parties intending to levy a fine or suffer a common recovery shall, on

(*n*) *Clerk v. Richards* and Another, 2 Vern. 412; *Jones v. Roberts*, 18 June, 1830, Reg. Lib. A. 1829, fol. 2147; Reg. Lib. A. 1830, fol. 397.

(*o*) *Frank v. Mainwaring*, 2 Beav. 115. As to the form of the issue for trying the validity of deeds,

executed by a party found by inquisition, to have been a lunatic from a time anterior to the execution of the deeds; see *Frank v. Mainwaring*, 4 Beav. 37.

(*p*) *Frank v. Mainwaring*, 2 Beav. 126.

(*q*) S. C. 4 Beav. 37.

or before the thirty-first day of December, 1833, have sued out a writ of dedimus, or any other writ, in the regular proceedings of such fine or recovery; and any fine or common recovery which shall be levied or suffered contrary to this provision shall be absolutely void (*a*).

After the thirty-first of December, 1833, every actual tenant in tail, in possession, remainder, contingency, or otherwise, shall have full power to dispose of the lands entailed in fee simple, absolute, or for any less estate, saving the rights of certain persons (*b*).

If when there shall be a tenant in tail of lands under a settlement there shall subsist in the same lands under the same settlement an estate for years determinable on life, or any greater estate prior to an estate tail then the owner of such prior estate shall be the protector of the settlement as to the lands in which such estate shall subsist, though the same may have been charged or disposed of; and an estate by the curtesy in respect of the estate tail or any prior estate created by the same settlement, shall be a prior estate; and an estate by way of resulting use or trust for the settlor, and a right to the surplus rents, shall be an estate within the meaning of this clause (*c*).

The Lord Chancellor, &c. to be the protector.—If any person, protector of a settlement, shall be lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, then the Lord High Chancellor of Great Britain, or the Lord Keeper or the Lords Commissioners for the custody of the Great Seal of Great Britain, for the time being, or other the person or persons for the time being intrusted by the King's sign manual with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, shall be the protector of such settlement in lieu of the person who shall be such lunatic or idiot or of unsound mind as aforesaid (*d*).

Consent to disposition by lunatic tenant in tail.—In every

(*a*) 3 & 4 Wm. 4, c. 74, s. 2. The 31st Oct. 1834, is the date as to Ireland, 4 & 5 Wm. 4, c. 92, s. 2.

(*b*) 3 & 4 Wm. 4, c. 74, s. 15; 4 & 5 Wm. 4, c. 92, s. 12, Ir.

(*c*) 3 & 4 Wm. 4, c. 74, s. 22; 4

& 5 Wm. 4, c. 92, s. 19, Ir.

(*d*) 3 & 4 Wm. 4, c. 74, s. 33. The remainder of this clause makes the Court of Chancery protector in cases of treason, felony, and infamy; 4 & 5 Wm. 4, c. 92, s. 31, Ir.

case in which the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), while protector of such settlement, shall, on the motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition under this act by such tenant in tail, and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid, shall be such as shall be approved of by such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), and it shall be lawful for such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), to make such orders in the matter as shall be thought necessary; and if such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), shall, in lieu of any such person as aforesaid, be the protector of a settlement, and there shall be any other person protector of the same settlement jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person being protector as aforesaid shall consent thereto in the manner in which the consent of the protector is by this act required to be given (*d*).

Order of the Lord Chancellor, &c. to be evidence of consent.
—In every case in which the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons

(*d*) 3 & 4 Wm. 4, c. 74, s. 48. The consent is required to be by deed; see sections 42—46, of the act; 4 & 5 Wm. 4, c. 92, Ir. ss. 46, 40, 41.

found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement, no document or instrument as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition shall have been made (*e*).

After the 31st of December, 1833, a married woman, in every case except that of being tenant in tail, may by deed dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and may dispose of, release, surrender or extinguish any estate therein, and may release or extinguish powers as if she were a feme sole; but to render the same valid, her husband must concur, and the deed must be acknowledged by her as thereafter mentioned. The act does not extend to copyholds, where, before this act, the wife and her husband could have effected the same by surrender (*f*).

In every case in which a husband and wife shall, either in or out of Court, surrender into the hands of the lord of the manor any lands held by copy of court roll, parcel of the manor, and in which she alone, or she and her husband in her right, may have an equitable estate, the wife shall, upon such surrender being made, be separately examined by the person taking the surrender, in the same manner as she would have been if the estate, to which she alone, or she and her husband in her right, may be entitled in such lands, were an estate at law instead of a mere estate in equity; and every such surrender, when such examination shall be taken, shall be binding on the married woman and all persons claiming under her; and all surrenders theretofore made of lands similarly circumstanced, where the wife shall have been separately examined by the person taking the surrender, are declared to be good and valid (*g*).

When Court of Common Pleas in the case of a husband being lunatic, &c. may dispense with his concurrence.—"If a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing

(*e*) 3 & 4 Wm. 4, c. 74, s. 49; 4 & 5 Wm. 4, c. 92, s. 68, Ir.
& 5 Wm. 4, c. 92, s. 47, Ir.

(*g*) 3 & 4 Wm. 4, c. 74, s. 90.

(*f*) 3 & 4 Wm. 4, c. 74, s. 77; 4

a deed, or of making a surrender of lands held by copy of court roll, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever, it shall be lawful for the Court of Common Pleas at Westminster, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the said Court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by this act or otherwise; and all acts, deeds, or surrenders to be done, executed, or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if she were a feme sole, and when done, executed, or made by her, shall (but without prejudice to the rights of the husband as then existing independently of this act) be as good and valid as they would have been if the husband had concurred: Provided always, that this clause shall not extend to the case of a married woman where under this act the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement in lieu of her husband" (*h*).

Cases as to the exercise of the power of consenting given to the Lord Chancellor.—An order has been made by the Lord Chancellor as protector for enabling a *quasi* tenant in tail in remainder of a sum of stock of which the tenant for life was a lunatic, to dispose of the fund. In *Grant v. Yea* (*i*), the lunatic was tenant for life, and his eldest son *quasi* tenant in tail in remainder, of a sum in the three per cent. consols, being the produce of lands which had been sold under an order of the Court, and declared to be subject to the same uses as the lands had been subject to. The son petitioned that the Lord

(*h*) 3 & 4 Wm. 4, c. 74, s. 91; (*i*) 3 M. & K. 245.
4 & 5 Wm. 4, c. 92, s. 81, *Ir*.

Chancellor as protector under the above act, would concur with the petitioner in barring the estate tail and ulterior limitations, to which the stock was subject, for the purpose of enabling the petitioner to convert the stock into money to be applied in the purchase of a commission in the army. It was stated in an affidavit made in support of the petition by the lunatic's brother-in-law, who was committee of the estate, that the lunatic was in a state of hopeless lunacy; that he was possessed of landed estates of the value of £2,500 a-year, and of property in the funds, yielding an annual income of £400, that a yearly allowance of £1,300 was made to his wife for the maintenance of the lunatic; and that the petitioner, who was a lieutenant in the army, had an allowance of £400 a-year out of the estate; that the purpose to which the principal part of the money in question was to be applied, was the purchase of a captain's commission for the petitioner, who had entered the army with the full approbation of his father, and who, it was represented, had now a favourable opportunity of purchasing a step. The 15th, 22nd, 33rd, 48th, 49th, and 71st (*i*) sections of the act were referred to. The committee of the estate and next of kin, and the lunatic's younger brother, who had a charge upon the fund, consented to the application. Lord *Brougham*, C., expressed his opinion, that this was a case which fell within the provisions of the 33rd and 48th sections of the act referred to, and that the circumstances were such as to justify him in exercising his discretion. The Master to whom a reference was made having found the facts stated in the petition, an order was made directing the stock to be sold, and the produce to be paid to the committee, to be applied for the advancement of the petitioner in the army, and that the petitioner's allowance out of his father's estate should be reduced to the extent of the dividends of the stock sold.

In re Blewitt (*j*), an estate was settled by will upon the first and other sons of the testator's son in tail male, with remainder to his daughters in tail general, with remainder over to collateral relations. The eldest son of the testator's son was tenant in tail in possession, and was a bachelor of the age of thirty-six, and had been for many years in a state of hopeless lunacy.

(*i*) The 71 sect. applies the pre- be entailed.

vious clauses to *money*, to be in- (*j*) 3 M. & K. 250.
vested in the purchase of lands to

The second son and next tenant in tail in remainder was married, but had no issue. A third son had died, leaving an infant daughter. The testator's son had only one daughter, who was then unmarried. The second son presented a petition, in which, in addition to the above facts it was represented, that if the petitioner and his sister should die in the lifetime of the lunatic, without issue, and without having barred the estate tail, limited to them by the will of their grandfather, the estate would go over to the lunatic's collateral relations, to the exclusion of the infant daughter of his deceased younger brother. The petition, therefore, prayed that the Lord Chancellor would consent to the petitioner's disposing of the settled estate, so as to enable him to acquire an estate in fee simple therein, saving only the rights of persons in respect of estates prior to the estate tail vested in the petitioner. According to the report of this case, the counsel for the petitioner admitted that the 22nd section of the 3 & 4 Wm. 4, c. 74, coupled with the 33d and 48th sections, provided in terms only for the case of a lunatic, who was tenant for life of a settled estate; but he contended, that the reason for calling in aid the authority of the Lord Chancellor, seemed equally strong, if not stronger, where the lunatic had a larger interest; and perhaps, therefore, the equity of the statute might be extended to such a case, if the Court saw upon the circumstances disclosed a sufficient ground for the exercise of its discretionary jurisdiction. Lord *Brougham* refused to make any order, observing that, according to the inclination of his opinion, the act did not give him any authority to interpose in such a case; but, even assuming that he possessed such authority, he did not think that any sufficient ground had been stated in the petition to induce him to exercise a discretionary jurisdiction in the present instance. And on a similar application in the same case being afterwards made by the same party to Lord *Lyndhurst*, his Lordship thought that he had no jurisdiction, and declined to make any order.

An application by a tenant in tail in remainder to the Lord Chancellor, as protector, to consent to bar the remainder in tail, was refused where the lunatic is the first tenant in tail with reversion to him in fee.

In re Wood (*k*), application was made to the Lord Chancellor, as protector (in place of a lunatic) of a settlement created by will, to give his assistance in barring an estate tail in remainder, the lunatic being first tenant in tail, with the ultimate reversion to the testator's right heirs, the lunatic being such heir. The application was on the petition of a husband and his wife, the latter being the tenant in tail in remainder, for the purpose of barring her estate tail in remainder, and of limiting the estate to herself in fee in remainder expectant on the decease, and failure of the issue of the lunatic, who was sixty-four, and had never been married.

Lord *Cottenham*, C., upon the authority of the preceding case, thought that he was not protector of the settlement within the act of Parliament. If, however, he had the power which he was asked to exercise, his Lordship thought that he should not be justified in so dealing with the lunatic's property. The lunatic had the whole interest in the estate, except the intermediate interest in the female petitioner, and if that should drop during his life, he would have the absolute interest.

The principles by which the Lord Chancellor, when protector of the settlement in the place of a lunatic, will be guided in giving or withholding his consent, are more fully laid down in the following case.

In re Newman (*l*), the lunatic was tenant for life, with remainder to his children, as tenants in common in tail, with remainder over to the brothers and sisters of the lunatic as tenants in common in tail, with an ultimate remainder to the right heirs of the testator. The lunatic was forty-three years old, had no child, and was unmarried. The eldest son of the testator, and eldest brother of the lunatic, was the testator's heir-at-law; and he had a remainder in tail, in one-sixth, with the ultimate remainder in fee in the entirety. Application was made to the Court by the husband of one of the daughters of the testator, who was entitled, in default of issue of the lunatic, to an estate-tail in one-sixth, praying that the Lord Chancellor would consent, on behalf of the lunatic tenant for life, to a deed, the object of which was to bar the issue of that

(*k*) 3 Myl. & Cr. 266.

(*l*) 2 Myl. & Cr. 112.

daughter, and, of course to destroy the remainder to the heirs of the settlor, in order to give this share of the property to the husband and wife, to dispose of as they pleased, for it was proposed to be settled to such uses as they should appoint. Lord *Cottenham*, C., in delivering judgment, said, "The petition came before me as protector of the settlement, under the Fines and Recoveries Act, to induce me to consent to a deed of disposition on the part of the lunatic, who is tenant for life, to act, in fact, for the tenant for life, in order to give effect to a recovery. As protector of the settlement, the only duty of the Court is, to see what in reference to the interests of the family, it would be proper for the tenant for life to do; and the object must be rather to protect the objects of the settlement than to give any benefit to one member of the family to the exclusion of the others. Now, if nothing is done, one-sixth will go to this daughter and her children, if she has any, and if not, to the eldest son of the testator as his right heir; and, I am asked to consent to that which will take it away from the eldest son, and take it away from the family, by giving it to the husband of the daughter. That would be any thing but protecting the settlement, it would be destroying the settlement; giving the estate to a person not a member of the family, namely, the husband of the daughter. I should not consider that it would be a proper act for the tenant for life to concur in a deed of disposition to that effect."

Real estates were devised to trustees upon trust to raise by sale or mortgage thereof, sufficient to pay the debts and legacies of the testatrix, and subject thereto to the use of A. for life, with remainder to his first and other sons in tail male, with remainders over. In a suit instituted in the Court of Exchequer in Ireland for the payment of the debts and legacies of the testatrix, a decree for a sale was pronounced, under which accordingly, a sale was had; but pending the proceedings in the suit, A. the tenant for life died, leaving him surviving three sons, of whom S. the eldest, and first tenant in tail under the will of the testatrix, was a lunatic, and so found by inquisition. Upon an application in the matter of the lunacy on the part of the plaintiffs in the Exchequer suit, that the committee should be

directed to execute the necessary deed to bar the estate tail of the lunatic, the Court refused to make the order, on the ground that the act 4 & 5 Wm. c. 92, could not be brought in aid of the jurisdiction, and because the proceedings in the Court of Exchequer as to the sale could not be adopted by the Lord Chancellor in lunacy, and the case did not come within 11 Geo. 4 and 1 Wm. 4, c. 65, s. 28. It seems that, if the legal fee was in trustees, the concurrence of the committee of the lunatic was not necessary (*m*).

SECTION III.

Of Alienation by Deed.

EVERY alienation and contract affecting the rights of a party ought to be performed with sound judgment, and the acts of the will which are expressed in certain instruments made for evidencing intention, must be understood to be those of a mind endued with sufficient reason to understand their nature and effect, otherwise, they are either absolutely void or voidable only (*a*).

The feoffment of an idiot or lunatic in person is not void, but voidable (*b*); but it cannot be avoided by the party himself on his recovery, and the reason given in the books is, because no man is permitted by law to disable himself (*c*).

(*m*) *In re Sherrett*, 2 Dru. & War. 585. See Sugd. V. & P. pp. 573—606, 11th ed. 1 Hayes on Conv. pp. 148—222, 5th ed. *Shelford's* Real Prop. Stat. pp. 270—405, 4th ed.

(*a*) The law of England upon this subject, seems to have been nearly the same in the time of our earliest legal writers, as at the present day. *Generaliter tamen tenendum est, quod mutus donationem facere non potest, quia donationi consentire non potest; sicut nec furiosus, nec mente captus, nisi lucidis gaudeat intervallis.* Cowell's

Instit. Juris. Angl. Lib. 2, tit. 7, s. 4; Fleta, Lib. 3, c. 3, s. 10; Mirrour of Justices, c. 2, s. 27. Furiosus autem stipulari non potest, nec aliquod negotium agere, quia non intelligit quid agit. Eodem modo, nec infans, vel qui infanti proximus est, et qui multum a furioso non distat, nisi hoc fiat ad commodum suum et cum tutoris autoritate. Bract. Lib. 3, c. 2, s. 8; Fleta, Lib. 2, c. 56, s. 19.

(*b*) 2 Roll. Abr. 2, (E.) pl. 3; Shepp. Touchst. 204.

(*c*) Litt. ss. 405, 406; Co. Litt. 247 b; 4 Rep. 126, 127.

The reason why feoffments of infants and persons *non compos mentis* are voidable only, proceeds from the solemnity of livery of seisin, which was anciently transacted *coram paribus curtis*, who signed their attestation to the same, which the law presumed they would not have done, had the incapacity of the party been apparent (*d*).

If a man, when of sane memory, makes a feoffment with power of attorney to deliver seisin, which is delivered by the attorney after the feoffor has become *non compos mentis*, it is good, having relation to the time when the authority was given (*e*). But, if a lunatic makes a feoffment with letter of attorney, and livery is made after he has recovered his understanding, but without his further assent, the feoffment is void (*f*).

A feoffment made after the 1st October, 1845, other than a feoffment made under a custom by an infant, shall be void at law, unless evidenced by deed, and a feoffment made after the same time shall not have any tortious operation (*g*).

It has been said that an exchange made between a man of unsound mind and another person, is not void but voidable, and that it is good against the former, although his heir may avoid or confirm it at his election (*h*). But, whether such a transaction be void or voidable only must, it should seem, depend upon the nature of the deed by which it has been effected.

By the common law a writ lay for compelling a partition of lands belonging to coparceners, and by the statutes 31 Hen. 8, c. 1, and 32 Hen. 8, c. 32, the same remedy was extended to joint-tenants and tenants in common. It is said, that, if par-
ceners of nonsane memory make partition, unless it be equal, it shall only bind the parties themselves, but not their issue; and the reason given is the same as that why all other contracts bind them, *viz.*, because no man is admitted to stultify himself; but the issue may avoid such partition for the same reason as all other contracts made by such ancestors during their insanity, as they may be admitted to shew the incapacity of their an-

(*d*) *Thompson v. Leach*, Carth. 435; *S. C.* 2 Salk. 427; 3 Mod. 301; Comb. 468; 3 Lev. 284; Show. P. C. 152.

(*e*) *Jennings v. Bragg*, Cro. Eliz. 446; Perk. c. 1, s. 22.

(*f*) Perk. c. 1, s. 23; 2 Roll. Abr. 2, (E.) pl. 5.

(*g*) 8 & 9 Vict. c. 106, ss. 3, 4.

(*h*) Shepp. Touchst. 291; Bro. Exchange 9; see Perk. c. 4, s. 198. Co. Litt. 51 b.

cestors for avoiding all acts done by them during that time (*i*). By statute 8 & 9 Wm. 3, c. 31 (*k*), an easier method of carrying on the proceedings in a writ of partition of lands held either in joint-tenancy, coparcenary, or in common, than was used at the common law, is chalked out and provided. By the second section of that act it is declared, that if the tenant or other person, against whom judgment on a partition shall have been given, shall be *non sanæ memoriæ*, then such person may, within one year after the removal of his inability, shew cause on motion against such judgment, and the Court may award a new partition. But resort is now seldom had to the common law mode of compelling partitions of land, but they are effected by means of a bill in equity (*l*). The act 3 & 4 Wm. 4, c. 27, s. 36, has abolished the writ of partition.

The circumstance of a tenant in common being a person of weak mind will not prevent the Court from making a decree against such party in a suit for a partition (*m*).

The stat. 11 Geo. 4, and 1 Wm. 4, c. 60, does not apply to cases of partition; and an infant will not be directed under the provisions of that act, to execute a conveyance under a partition, unless the rights of the parties have been previously established by a decree (*n*).

The release, surrender, letter of attorney to give livery, warranty, or any other deed or writing obligatory, though it is said, that, at law, they bind the *non compos*, are mere *nullities* with respect to others, and differ from a feoffment in person, which is a matter of greater solemnity. Therefore, where a *non compos*, (being tenant for life, remainder to his first and other sons, with remainder over), did by deed, before the birth of any son, surrender to the remainderman, with the intent to destroy the contingent remainders, and died leaving issue a son, it was held that the surrender was void *ab initio*, and not barely voidable; for, had the surrender been voidable

(*i*) Co. Litt. 166 a; 4 Rep. 125; 2 Vol. 547; Mitf. pl. pp. 119, 120, Bac. Abr. tit. "Idiots and Lun." (F.) 122, 123, 4th ed.

(*k*) This statute was made perpetual by 3 & 4 Anne, c. 18, s. 2. See 41 Geo. 3, c. 109, s. 16; *ante*. p. 256.

(*m*) *Hollingworth v. Sidebottom*, 8 Sim. 620; 7 Law J. 1837, Ch. 2.

(*n*) *In re Neachel*, Law J. 1845, Ch. 121.

(*l*) 2 Ves. jun. 125; Cruise Dig.

only, yet, if at any time it had been effectual to merge the estate for life before the birth of the son, it could not have been revived again by any act *ex post facto*; and that, the surrender being void *ab initio*, the son, though he did not claim as heir, *but by way of remainder*, might take advantage of it; and in this case a distinction was established between a feoffment with livery *propriis manibus* of a *non compos*, and his bare execution of a deed by *sealing and delivering*, as in cases of surrenders, grants, releases, &c., the former being voidable, the latter absolutely void *ab initio* as to third parties (*o*).

It was said by Lord *Brougham*, C., that a lunatic cannot bind himself by bond, or by bill, nor release a debt by specialty, nor be a cognizor in a statute merchant, staple, or in a judgment, warrant of attorney, or any other security, but he may render his assets liable for money actually received (*p*).

It has been decided that a man, by bare execution of an instrument, does not make it his deed, if, at the time, he was so weak in mind as to be incapable of understanding it, if explained to him, although he might not fall within the strict legal definition of an idiot.

In an action of ejectment, the title of the lessor of the plaintiff was, under a remainder in tail, limited by a deed, dated the 10th July, 1762. The title of the defendant depended upon a fine levied, and a recovery suffered, by one John Shenton Ball, (who held the first estate tail under the deed of 1762), and a deed, executed by him in October, 1785, leading the uses of the fine and recovery, in which recovery he was vouched and appeared by attorney. The sole question between the parties was, whether the deed of 1785 was, or was not, valid at law, as the deed of J. S. Ball. Witnesses on the part of the plaintiff deposed that he, at the time of his executing such deed, was not, in their opinion, competent to execute the same; and further deposed to his acts

(*o*) *Thompson v. Leach*, Carth. 435; *S. C.* 2 Salk. 427; 3 Mod. 301; 12 Mod. 173; Comb. 468; 3 Lev. 284; 2 Vent. 198; Show. Parl. Cas. 152. See Perk. s. 21; Bryd. 46; Noy's Maxims, p. 145, Bythe-

wood's ed; Bac. Abr. tit. "Idiots and Lun." (F.)

(*p*) *Howard v. Digby*, 2 Cl. & Fin. 661. See *ante*, p. 323, *post*, Ch. ix. s. 2.

and conduct as evidencing his mental incapacity. Witnesses for the defendant swore, that, in their opinion, J. S. Ball, at the time of the execution of the deed, was competent to execute it, and further deposed to his acts and conduct evidencing his mental capacity; and that he was certainly *not an idiot*. It was admitted by both parties, that the alleged incapacity of J. S. Ball did not arise from lunacy, no evidence of his lunacy having ever been given. The learned judge, in charging the jury, told them, “that the question for them to try was, whether J. S. Ball was a person of sound mind or not; and that, to constitute such unsoundness of mind as would avoid a deed at law, the person executing such deed must be incapable of understanding and acting in the ordinary affairs of life; that it was not necessary that he should be without a glimmering of reason, but that it was sufficient if he was incapable of understanding his own ordinary concerns; that, as one test of such incapacity, the jury were at liberty to consider, whether he was capable of understanding what he did, by executing the deed in question, when its general import was explained to him.”—On the part of the defendant, a bill of exceptions was taken to this charge, the defendant’s counsel insisting, that, in order to avoid the said deed at law, the unsoundness of the mind of J. S. Ball must amount to that degree of unsoundness which constituted idiocy, according to the strict legal definition of an idiot. Upon the argument of the bill of exceptions, it was held, that the charge of the Judge was right, and that a man, by putting his seal to an instrument, does not make it his deed, if, at the time, he was so weak in mind as to be incapable of understanding it, if explained to him, although he might not fall within the strict legal definition of an idiot (*q*).

It was observed by Chief Justice *Bushe*, in the case last cited—“There does not seem to be in principle any foundation for the assertion, that the perpetual infirmity of mind which constitutes idiocy is the only incompetence by which a deed can be avoided at law, in a case in which neither lunacy,

(*q*) *Mannin d. Bull, v. Ball, of Blackwood v. Gregg*, Hayes, Ir. Smith & Batty, 183. See Lessee R. 277.

or drunkenness, or a sudden visitation of God, are alleged as the causes of incompetence. On the contrary, the proceedings in Chancery furnish an analogy, which points to a different conclusion; and when the law as to lucid intervals is considered, and when we recollect that a plea of *non est factum* is supported by shewing that the party was blind (*r*) or illiterate, and that the deed was misread to him (*s*), or that he was so drunk as not to know what he did, the principle would rather seem to be, that incapacity at the time to understand the act is the criterion of unsoundness of mind upon such a plea, and not the perpetual infirmity of mind described in the strict legal definition of an idiot (*t*).” A writ of error was brought in the last case to the Court of Exchequer Chamber in Ireland, and the twelve Judges were equally divided on the bill of exceptions; and, on appeal to the House of Lords, the judgment of the Court below was affirmed (*u*).

In one case, where a deed contained false recitals and erasures, and it appeared by evidence in the cause, that, before the date of such deed, the grantor was of a weak constitution, and subject to a malady which clouded his intellectual faculties, and that he was a man of very improvident habits, the Court of Chancery in Ireland would not act on the deed, without first sending it to a jury (*v*).

The acts of lunatics during their lucid intervals bind them (*w*). Deeds executed by lunatics during their lucid intervals are valid; but it will be incumbent on the party claiming under such deeds, to prove that they were executed during a lucid interval (*x*). A deed executed by a party, whilst under confinement in a lunatic asylum, has been held good. Lord *Eldon*, C., mentioned the case of a gentleman, who, being confined in a lunatic asylum, had a lucid interval, and made

(*r*) 2 Rep. 3; 12 Rep. 89.

(*s*) 2 Rep. 9; 1 And. 129; Kelw. Rep. 70, b; 1 Sid. 312. See *Skinner*, 159, pl. 6; 2 Atk. 327; Com. Dig. tit. “Fait” (B. 2).

(*t*) 1 Smith & Batty, 198.

(*u*) *Ball v. Mannin*, 1 Dow’s P. C. New. Ser. p. 380; S. C. 3 Bligh,

New Ser. 1; 1 Smith & Batty, 454.

(*v*) *Burke v. O’Malley*, 1 Beatty, 96.

(*w*) 4 Rep. 25 a. See *post*, Chap. vii. s. 5.

(*x*) *Attorney-General v. Parnter*, 3 Bro. C. C. 441; *ante*, p. 295. See 1 Preston, Abs. p. 331.

a disposition of his property by deed, which was exactly that which he ought to have made, having regard to the circumstance that he had before provided for some, and not for other members of his family; and that which he, before his insanity, communicated to a friend, he intended to make; and he did it under a sense of his situation, and the impression that no time was to be lost, and to protect himself against a relapse. The deed executed under such circumstances was held good (y).

The Court, under the peculiar circumstances of the case, refused to set aside as void, two deeds executed by the plaintiff, on the ground that they were executed by him when he was under confinement as a lunatic. It appeared that the deeds were executed with the highest sense of prudence, that the plaintiff was manifestly in such a state of embarrassment in his affairs, in addition to the condition of his mind, that it was utterly impossible for him to proceed; he was insolvent, and deficient to the amount of several thousand pounds. The arrangement carried into effect by the deeds, consisted of a settlement with creditors, by the payment of a composition, the greater part of which was secured by the personal obligation and liability of the defendants, by taking upon themselves that personal responsibility, they relieved him entirely from the pressure of his creditors beyond his own family, and they then, at their personal risk and liability, obtained a release for his benefit. In order to afford them an indemnity, which formed a part of their arrangement all through, it was agreed that he should assign his estate and effects to them, that they should apply the proceeds of it for their indemnity, after paying the proper expenses, and when their indemnity had been secured, they were to stand possessed of the whole surplus in trust for the plaintiff.

Lord *Langdale*, M. R., observed, "it must be admitted, that the defendants did an act which can by no means be considered consistent with legal prudence; an act which exposed them to very considerable hazard, which made it incumbent on them to

shew, at any time when they were called upon to do so, that their proceedings were entirely fair and disinterested; that there was not the slightest personal interest to be obtained; that there was not the smallest imposition practised on the other party. They placed themselves in a position which disentitled them to the ordinary presumptions which are given in the general transactions of mankind. The plaintiff being in confinement under medical certificates justifying his being confined as a lunatic, and being at the same time under personal constraint, the burden of proof was thrown upon those who dealt with him. But when the matter comes to be investigated, and it turns out that the defendants have acted fairly and disinterestedly for the benefit of their relation; that they have sought no benefit for themselves; that they have done for him alone an act of the highest prudence, the deeds and the circumstances under which the deeds were executed, became of comparatively trifling importance." As the bill sought to set aside the deeds *in toto*, and prayed no alternative relief, the Court refused without the defendants' consent to decree an account of the receipts and payments of the defendants, in the execution of their trusts, but left the plaintiff to file another bill for that purpose, if he thought fit (z).

The Court refused to set aside a settlement made in consideration of marriage by a man whose intellects were impaired, and which had been obtained by fraud and imposition, but in which the wife who took an interest was not concerned (a).

The Court of Chancery generally directs an issue to try whether a particular deed or contract was executed during a lucid interval, when that is the point in issue (b).

It has already been shewn (c), that an inquisition of lunacy is not conclusive as to third parties claiming under instruments previously executed by the lunatic, and the Crown, before the inquisition, cannot avoid the alienation of an idiot or lunatic; but afterwards a *scire facias* may be sued out at the suit of the

(z) *Selby v. Jackson*, 6 Beav. 192.

(a) *Barrow v. Barrow*, Dick. 504.

(b) *Attorney-General v. Parnther*,
3 Br. C. C. 441; *Hall v. Warren*,

9 Ves. 605; *Clerk v. Richards* and
Another, 2 Vern. 412.

(c) See *ante*, pp. 74, 75.

Crown against the person in possession, or the alienee, of a lunatic's estate (*c*), which writ may be traversed (*d*). The Crown, however, can only recover the profits from the time of the office found (*e*); but conveyances by an idiot or lunatic, by a matter of record, cannot be avoided by the Crown (*f*).

It does not appear to have been the practice for a considerable time to issue a *scire facias* at the suit of the Crown, for the purpose of trying the validity of deeds executed by idiots or lunatics.

The Lord Chancellor sitting in lunacy has sometimes directed an issue, to try the validity of deeds, which had been executed by the lunatic prior to the issuing of the commission of lunacy, but subsequently to the time at which the jury had found the lunacy to have commenced. But this course was disapproved in a case where a bond had been executed by a lunatic, and it was suggested that the proper course was to file a bill for trying its validity in a regular way (*g*).

It appeared, that by the petition of persons claiming under certain deeds, that a man, in June, 1826, before he had been found a lunatic, entered into three bonds for securing the payment of money to the petitioners, and by indentures of lease and release, dated the 9th and 10th June, 1826, conveyed freehold property, for the purpose of securing the payment of the money due on such bonds. That, two years after the execution of such securities, a commission of lunacy was issued against the party, under which he was found to have been of unsound mind, from the 5th March, 1826. The petitioners stated, that the finding of the inquisition was erroneous, in so far as it declared, that the lunatic had been of unsound mind from the 5th March, 1826, and that they believed that they could establish the validity of the said securities beyond all

(*c*) F.N.B. 106; *Leach v. Thompson*, Show. P. C. 152; *S. C.* Comb. 468.

(*d*) 50 Ass. pl. 2, Br. Abr. tit. "Idiots," 4 Rep. 59.

(*e*) Staunf. Pr. Reg. 34; 8 Rep.

170 b; *ante*, p. 11.

(*f*) Crompt. on Courts, 117 a; 4 Rep. 126 b.

(*g*) *In re Lady Kirkwall*, 8 Aug. 1837.

doubt, if allowed the opportunity of doing so. The petition prayed that an issue might be directed to inquire of the state of mind of the lunatic, on the 12th day of June, 1826, when the deeds and bonds were executed; or, that the petitioners might be at liberty to traverse the inquisition. The Lord Chancellor ordered that issues should be tried in the Court of King's Bench in the city of London, before a special jury of the city, to inquire whether the lunatic was a person of unsound mind, so that he was not sufficient for the government of himself, his manors, &c. at the time when he executed the indentures of the 9th and 10th June, 1826, and the bonds; and if he was not at that time a person of unsound mind as aforesaid, whether the said indentures or bonds were invalid; and it was ordered, that the petitioners should be plaintiffs in the said issues, and the committee of the estate of the lunatic defendant; and the consideration of further directions and costs was reserved until the return of such issues (*h*).

There is an instance, however, of a Court of equity having decided on the insanity of a party, upon the testimony of witnesses, without a trial at law. Thus, in a case, where an assignment of a lease had been obtained by undue influence, and for an inadequate consideration, from a person who was afterwards found a lunatic by inquisition, the Court of Chancery in Ireland set aside the transaction, on the ground of the insanity of the party, without a trial at law; and this decree was affirmed on appeal to the House of Lords (*i*).

It is laid down by Sir *E. Coke*, that if an idiot or lunatic make a feoffment in fee, it cannot be avoided by the party's pleading that he was an idiot or a lunatic when the feoffment was executed. But, upon office found for the King, the King shall avoid the feoffment for the benefit of the *non compos*; for, although the parties themselves cannot be received to disable themselves, yet a jury, upon their oaths, may find the truth of the matter (*k*).

(*h*) *In re Humpleby*, 1st June, 632; Toml. ed. 1829.

(*k*) Co. Litt. 247 a; 4 Rep. 127 a;

(*i*) *Evans v. Blood*, 3 Bro. P. C. Shepp. Touchst. 289.

It is said, however, in *Fitzherbert* (*l*), that the writ of *dum fuit non compos mentis* lies for him who has aliened his land in fee simple, tail, for life or years, whilst he was of unsound mind; but this cannot be reconciled with the maxim, that a man shall not stultify himself. It is clear, that the heir of the *non compos* may have this writ in case of any alienation of his ancestor by matter *in pais*, but not by matter of record, or he may enter, and, consequently, maintain an ejectment, which, of course, is the remedy adopted in modern practice (*m*). The above writ is abolished by stat. 3 & 4 Wm. 4, c. 27, s. 36.

It is not necessary for the heir to have a *scire facias* to avoid the feoffment of his ancestor made during his lunacy, for he may enter without it; because, by the death of the ancestor, the title which the feoffee claimed under him is determined; but, the Crown cannot, during the life of the *non compos*, avoid the feoffment, without a *scire facias* (*n*).

Although at law a person of non-sane mind is not allowed to plead his own incapacity, yet, there are two classes of persons who, at his death, may avoid his deeds, by shewing his insanity, viz. privies in blood, as heirs, and privies in representation, as executors or administrators, who represent the person of the testator and intestate; the former may shew the disability of their ancestor, the latter the infirmity of their testator or intestate. But this privilege is not allowed to privies in estate, as donee in tail and reversioner, or remainder-man in fee, nor to privies in tenure, as lord by escheat (*o*). And, therefore, if donee in tail, being *non compos mentis*, make a feoffment in fee, and die without issue, the reversioner or remainder-man cannot enter, nor take advantage of the disability of the donee; so also, if *non compos* make a feoffment in fee, and die without an heir, the lord claiming by escheat cannot avoid it (*p*). This distinction made by Sir *E. Coke* was said (*q*), in argument, to have

(*l*) Fitz. N. B. 504, 2 vol. p. 202, ed. 1794. See Booth on Real Actions, p. 189.

(*m*) Litt. s. 405; Co. Litt. 247 b; Booth on Real Actions, p. 189; 1 Roscoe on Real Actions, pp. 92, 93.

(*n*) *Thompson v. Leach*, Comb. 468.

(*o*) *Beverley's case*, 4 Rep. 124 b; 8 Rep. 43 b, 44 b.

(*p*) 4 Rep. 124.

(*q*) 3 Mod. 307. See *ante*, p. 337.

been only an extrajudicial opinion, founded on no authority ; for there is no reason to be given, why privies in estate should not avoid such acts done by their ancestors as well as privies in blood, because the incapacity of the grantor extends to both.

It should be observed, that most of the authorities adopt the principle, that a man shall not be allowed to stultify himself ; and although this rule seems in some instances to have been relaxed (*r*), yet it does not appear to be settled, that even now a person who has executed a deed or contract when of unsound mind can, on returning to his senses, avoid it at law, by pleading his past incapacity. It is clear, however, that, after a man has been found a lunatic by inquisition, his committee may institute a suit on his behalf, for the purpose of setting aside deeds which were made during his insanity (*s*).

A deed made by a party in contemplation of madness, is good, if he was sane at the time of its execution (*t*).

A testator gave to his niece all his bond debts, and he gave to C., a person in whom he reposed great confidence besides other benefits, all the residue of his property. Four months after the date of the will, the testator took from a bond debtor a conveyance of an estate to himself for life, with remainder to C. in fee, and the bond was delivered up to be cancelled. C. took a part in promoting this transaction, but no direct fraud was established against him, and it did not appear that he exercised any positive control over the testator. Two days afterwards the testator committed suicide. The evidence as to the soundness of the testator's mind was conflicting, many acts consistent with sanity having been done by him up to the time of his death ; but the Court being of opinion, upon the whole evidence, that the testator at the time of purchasing the estate, in exchange for the bond, was of unsound mind, and considering the state of his mind, in connexion with the confidence which he placed in C., without directing an issue, set aside the conveyance, and declared the testator's niece entitled to the benefit, of the bond (*u*).

(*r*) See *post*, Chap. ix. s. 2, where the other authorities on this subject are collected.

(*s*) See *post*, Chap. x. s. 1.

(*t*) 5 Dow, 238.

(*u*) *Steed v. Calley*, 1 Keen, 620.

Lunatics, after they have been so found by inquisition, cannot alien their estates (*v*), until the commission has been superseded, and they have been restored to their property (*w*). The power of the person intrusted by the Sovereign's sign manual with the commitment of the estates of lunatics, to alien their property, will be the subject of future consideration (*x*).

Idiots and lunatics, it is said, are capable of purchasing lands, and, on recovering their senses, cannot waive the purchase, and if they agree to it, their heirs cannot avoid it after their deaths; although, if they die in their madness, or without having confirmed the purchase after they were restored to mental capacity, the transaction may be avoided by their heirs after their deaths (*y*). An estate was sold before the Master for payment of debts, and A. reported the best bidder. Before the report was confirmed, it was discovered that A. was insane at the time of the bidding. The Court ordered the estate to be resold (*z*). It was formerly said, that a *non compos* could not take under a grant of a copyhold, because he is incapable of fulfilling the duties of a copyholder, or of appointing a deputy (*a*). But there can now be no doubt but that a *non compos* may be the grantee of a copyhold estate (*b*).

SECTION IV.

Of Proceedings in Courts of Equity, for avoiding the Deeds and Contracts of Lunatics and Persons of Weak Minds.

As justice is always, on the one hand, anxious to protect persons of weak minds from their own acts, and, where insanity

(*v*) 4 Rep. 127 a; Dyer, 26 a.

(*w*) See *ante*, p. 283.

(*x*) See *post*, Chap. viii.

(*y*) Co. Litt. 2 b; 2 Vent. 203;
2 Bl. Comm. 291, 292; Bac. Abr.
tit. "Idiots and Lun." (D.)

(*z*) *Blackbeard v. Lindegren*, 1
Cox, 205.

(*a*) Calth. 51.

(*b*) *Shepp. Court Keep.* p. 115;
Co. Cop. s. 35; Bryd. p. 64, s. 27.
See *ante*, pp. 14, 263, 264.

is established at the time when deeds are executed, will set them aside, whether in their nature such as ought to be executed or not; so, on the other hand, if a man of weak intellect is a party to a deed which would not be improper if entered into by a man of the strongest mind, it is not for Judges to say, that because a person has at one moment, been afflicted with such a malady, he shall therefore never be restored so as to be competent effectually to do an act which a moral and good man would think it proper to do (a).

When a suit is instituted for the purpose of setting aside a deed or contract, on the ground of the insanity of the party at the time of its execution, an issue will generally be directed to try that fact, in order to inform the conscience of the Court (b). Thus, where a bill was filed against the co-heiresses of a mortgagor for payment of a sum alleged to have been advanced by him upon a deposit of title deeds and an agreement for a mortgage on the 2nd July, 1815, and for sale of the estate on which it was agreed to be charged, for payment of the mortgage debt; and it appeared that the mortgagor died intestate, and the defence set up was, that, at the time of such deposit, he was not in a state of mind capable of entering into any valid contract or of binding his estates, having been afflicted with insanity of mind, and having, on the 15th July, 1815, put an end to his existence, when in a state of lunacy—The Vice-Chancellor directed the parties to proceed to a trial of an issue in an action of trover, to be brought by the defendants against the plaintiffs for recovering a deed in his possession: the defendants were ordered to admit that they were co-heiresses of the mortgagor, and that there was no outstanding estate, and that they had the title deeds of the estate in their possession (c).

On the trial of the issue it was contended, that, by the law

(a) *Per Lord Eldon*, 5 Dow, P. C. 235.

(b) See *post*, Chap. x. ss. 1, 2; *Richards v. Symes*, 2 Atk. 319; *The Warden and Minor Canons of St. Paul's v. Morris*, 9 Ves. 155; *Pem-*

berton v. Pemberton, 11 Ves. 50; *Hampson v. Hampson*, 3 Ves. & Bea. 41.

(c) *Grindley v. Davies*, Reg. Lib. A. 1821, fol. 1738.

of England, there was no such thing as *partial insanity* (*d*); that a man insane on one point was incompetent to manage his own affairs; and that such a man was a fit object of a commission of lunacy, because no one could tell how his morbid feelings on one subject might influence his conduct in others. Mr. Baron *Garrow*, in his charge to the jury, said, that whether there might or might not be partial insanity, there might undoubtedly be lucid intervals, in which the wildest madman might be capable of disposing of his property or binding himself by contract. If the jury thought that the deeds were deposited by way of equitable mortgage, and that, at the precise time they were so deposited, the party understood what he was doing, and was competent to that particular act, they ought to find for the defendant; which they did accordingly (*e*).

It was afterwards decreed by the Court of Chancery, that it should be referred to the Master to take an account of the principal and interest due in respect of the sum claimed by the plaintiff, and to tax the costs of the suit and of the trial at law, and that the administratrix of the mortgagor should pay to the plaintiff what should be found due for such principal, interest, and costs (*f*).

In another case, where a bill was filed in Chancery by the committees of a lunatic to set aside conveyances, and it appeared that the grantor was, in and previously to 1802, a person of unsound mind, and addicted to drinking to excess, in which he was encouraged by the defendant, who had, after that time, obtained leases and conveyances in his own favour of the property of the lunatic; who, in the year 1822, had been found of unsound mind under a commission of lunacy from 1792 up to the period of the inquisition. Issues were directed to try, whether, at the time of the execution of each deed, the plaintiff was a person of unsound mind, so as not to be sufficient for the government of himself, his lands, and chattels (*g*).

(*d*) See *ante*, p. 43—46, *post*, Chap. vi. s. 6.

(*e*) *Davies and Another v. Grindley*, Shrewsbury Summer Assizes, 1 Aug. 1822.

(*f*) *Grindley v. Davies*, Reg. Lib. A. 1822, fol. 2244.

(*g*) *Murley v. Templeman*, Reg. Lib. B. 1825, fol. 1310.

A person's being of weak understanding is not of itself any objection in law to his disposing of his estates, if he be legally *compos mentis*; whether wise or unwise, he is the disposer of his own property, and his will stands as a reason for his actions. Neither Courts of law nor equity examine into the wisdom or prudence of men in disposing of their estates: the rules of judging of insanity are the same in Courts of equity as in Courts of law (*h*).

There are frequent instances in equity, where not only idiots and lunatics, but also persons of weak understandings, have been relieved, when they appeared to have been imposed upon in their dealings; and unreasonable purchases and securities, which had been obtained from them, have been set aside in their favour, where want of consideration, or the improvident nature of the transaction, has raised a presumption that fraud and misrepresentation were employed.

The Roman laws (*i*) drew a line between liberality and profusion; which considered immoderate extravagance—“*incon-sulta largitio*”—as a distemper of the mind, and treated a “*prodigus*,” as a madman: they said, “*expedit reipublicæ nequis sua re male utatur*.” They thought it safer for the public, as well as kinder to individuals, to lay by their estates, whilst they were under the tyranny of their passions, and reserve them for their use, when under the direction of reason. But our laws strike no such boundary; “*stat pro ratione voluntas*,” is the law with us; every man may give a part or all of his fortune to the most worthless object in the creation; and the Court of Chancery never did rescind or annul donations, merely because they were improvident, and such as a

(*h*) See *Osmond v. Fitzroy*, 3 P. Wms. 129; 2 Atk. 327. *Ante*, p. 39.

(*i*) The Roman lawgivers thought it for the interest of the public to take care that particular persons should not foolishly and riotously squander away their estates; and, therefore, when any person grew prodigal to that excess, that it was necessary to restrain him, the magistrates interdicted him the admin-
istration of his estate, and committed the care of it to a *curator*, till the owner should give greater proofs of his prudence and discretion. Domat, by Strahan, 1 Vol. p. 25, note; Dig. lib. 27, tit. 10; Ayliffe's Civil Law, book 2, tit. 40; Inst. of the Laws of Holland, by Henry, p. 110. Story's Conflict of Laws, ss. 99, 106.

wise man would not have made, or a man of very nice honour would not have accepted; nor will that Court measure the degrees of understanding, and say, that a weak man, provided he is out of the reach of a commission, may not give, as well as a wise man. But though that Court disclaims any such jurisdiction, yet, where a gift is immoderate, bears no proportion to the circumstances of the giver; where no reason at all appears, or the reason given is falsified, and proved to be a fiction, and the giver is a weak man, of a facile easy temper, liable to be imposed upon, the Court will look upon such a gift with a very jealous eye, and very strictly examine the conduct and behaviour of the persons in whose favour it is made; if it see that any arts or stratagems, or any undue means have been used by them to procure such a gift; if it see the least speck of imposition at the bottom, or that the donor is in such a situation with respect to the donee as may naturally give him an undue influence over him, if there be the least *scintilla* of fraud; in such a case the Court of Chancery will interpose (*k*); and, by the exercise of such a jurisdiction, it is so far from infringing the right of alienation, which is the inseparable incident to property, that the Court acts upon the principle of securing the full, ample, and uninfluenced enjoyment of it (*l*).

A voluntary conveyance, which a woman of weak understanding was prevailed upon to execute, was set aside as fraudulent (*m*).

Where a conveyance of an estate of 40*l.* *per annum* had been obtained from a man of seventy-two years of age, and of very weak intellect, in consideration of an annuity of 20*l.* secured by a covenant only, and he lived only two years afterwards; and where neither instructions for preparing the deed were given by him, nor was it read over to him, nor left in his possession:—on a bill by the heir-at-law, the defendants were directed to reconvey the estate, deliver up the writings,

(*k*) *Gartside v. Isherwood*, 1 Br. S. C. 2 Ves. sen. 627.
C. C. 560.

(*m*) *White v. Small*, 2 Ch. Cas.

(*l*) *Bridgeman v. Green* and 103.
Others, Wilmot's notes, 60, 61;

and restore the amount of the rents received beyond the annuity (*n*).

The Court of Chancery will relieve against a deed obtained under circumstances of *fanatical delusion* (*o*).

The heir-at-law of Sir John Lee filed a bill to set aside a conveyance, by indentures of lease and release, of an estate to the defendant Wade, on the ground of fraud, imposition, and undue influence. Sir John Lee was so silly, that they married him without his being sensible of it; and Wade had such an influence over his mind, that, when he was outrageous, the bare name of Wade would quiet him, as a nurse would a child. He gave no instructions for the conveyance, nor was it read over to him, nor left in his possession; and although a power of revocation was inserted, which required the presence of three particular persons, (their executors or administrators,) living distant from each other, not one of whom Sir John knew: nor was it probable that he could have brought them together had he known them; it did not even appear that he was sensible of the existence of such a power. The attorney, moreover, who drew the deed, charged the property with an annuity of 40*l.* payable to himself and his wife, and the survivor of them. Lord *Hardwicke*, C., directed the conveyance to be delivered up, with immediate possession of the property; and Wade to pay costs (*p*).

Courts of Equity hold a very strict hand over all deeds and conveyances obtained from persons soon after coming of age, by parties presuming too much on the confidence reposed in them, and obtaining deeds from the person under their charge (*q*). Therefore, where the parents of a young nobleman had intrusted a servant to take care of an infant heir on his travels, and to prevent his being imposed upon; and the servant continued with him until he was twenty-seven years of

(*n*) *Clarkson v. Hanway*, 2 P. Wms. 203. See *Filmer v. Gott*, 4 Br. P. C. 230.

(*o*) *Norton v. Reilly*, 1 Coll. Jur. 458; *S. C.* 2 Eden, 286. See *Middleton v. Sherburne*, 4 Y. & Coll. 358.

(*p*) *Bennet v. Wade*, 2 Atk. 325, 529.

(*q*) *Dawson v. Massey*, 1 Ball & Beatty, 219; *Archer v. Hudson*, 7 Beav. 351.

age, when he prevailed upon him to enter into a bond, to pay him a thousand pounds, which bond was prepared by the servant himself and kept a profound secret—The Court relieved on the ground of fraud, and decreed the bond to be delivered up, saying, that the servant, instead of acting agreeably to his trust, had been guilty of imposition; and that a breach of trust was of itself evidence of the greatest fraud; because a man, however careful otherwise, was apt to be off his guard when dealing with one in whom he reposed a confidence (*r*).

In one case, instruments obtained from a man who was represented to have been of weak understanding, shortly after he came of age, by the influence of persons who were or had been in a fiduciary character towards him, and who, instead of plundering him, ought to have protected his interests, were set aside thirty years after the execution (*s*).

Where a person, who had been a lunatic from his childhood, executed a conveyance of his whole property in favour of the keeper of a house for the reception of lunatics and his daughter, whilst residing under their care, it was set aside as fraudulent (*t*).

An agreement made in favour of a nephew by a person on his death bed, who, though not absolutely of nonsane mind, yet was in such a state of imbecility arising from indisposition, that he might easily at the time misconceive the effect of the agreement, was set aside by the Court of Chancery, on the ground that the uncle neither knew nor understood the contents of the instrument, and that advantage had been taken of his circumstances to obtain his signature (*u*).

The fact of a deed having been prepared by the party who takes a benefit under it, is generally considered a suspicious

(*r*) *Osmond v. Fitzroy and Another*, 3 P. Wms. 129. See *Nantes v. Corrock*, 9 Ves. 182; *Cray v. Mansfield*, 1 Ves. sen. 379; *Oldham v. Hand*, 2 Ves. sen. 259.

(*s*) *Aylward v. Kearney*, 2 Ball & Beatty, 463. See *Hatch v. Hatch*,

9 Ves. 292; *Say v. Barwick*, 1 Ves. & Bea. 195.

(*t*) *Wright v. Proud*, 13 Ves. 136.

(*u*) *Willan v. Willan*, 16 Ves. 72; S. C. 2 Dow, P. C. 274.

circumstance, and raises a presumption of fraud (*v*); but it is not decisive, and may be rebutted by shewing that the party has not abused the confidence placed in him (*w*). For, where an instrument is prepared by the direction of the party who seeks advantage from it, and the other party has no person with whom he consults on the subject, or any thing is withheld from a person so consulted, a great degree of jealousy attends the instrument; because the party from whom it is obtained has not the ordinary guard about him; and consequently, it becomes the duty of the person seeking benefit from the instrument, to shew that the person employed by him did conduct himself fairly and honestly in the transaction; and he has generally the means of doing so, by the testimony of the person who prepared the deed, as far as that testimony is deserving of credit. But where a deed is prepared by the party himself who seeks the benefit of it, without the intervention of any other person, that circumstance alone is sufficient to raise a suspicion of fraud; and the instrument is to be viewed with the greatest jealousy, because the person with whom he deals is thus deprived of the opportunity of any disinterested testimony on the subject; and, for this reason, instruments obtained by attorneys from their own clients are always viewed with extraordinary jealousy (*x*). And a Court of equity, upon general principles of policy, will frequently set aside gifts and other deeds executed by a client in favour of his attorney, during the continuance of such relation, even without any proof of actual fraud (*y*).

The situation of an attorney or solicitor puts it in his power to avail himself not only of the necessities of his client, but of his

(*v*) *Watt v. Grove*, 2 Sch. & Lef. 503; *Harris v. Tremenhere*, 15 Ves. 40; *Goddard v. Carlisle*, 9 Price, 196. See *post*, Chap. vii. s. 11.

(*w*) *Paine v. Hall*, 18 Ves. 475; *Balch v. Symes*, Turn. & R. 91, 92. See *post*, Chap. vii. s. 11, as to wills obtained under similar circumstances.

(*x*) *Per Lord Redesdale*, in *Watt v. Grove*, 2 Sch. & Lef. 502-3. See *Huguenin v. Baseley*, 14 Ves. 273; *Saunderson v. Glass*, 2 Atk. 296. See 3 Hagg. Eccl. Rep. 587; *post*, ch. vii. s. 11.

(*y*) *Welles v. Middleton*, 1 Cox, 112; *Wood v. Downes*, 18 Ves. 120.

good nature, liberality, and credulity, to obtain undue advantages, bargains, and gratuities. Hence the law often interposes to declare transactions void, which between other persons not standing in a confidential relation, would be held unobjectionable (z).

By establishing the principle, that while the relation of attorney and client subsists in its full vigour, the latter shall derive no benefit to himself from the contracts or bounty, or other negotiations of the former (a), it supersedes the necessity of any inquiry into the particular means, extent, and exertion of influence in a given case; a task often difficult and ill supported by evidence, which can be drawn from satisfactory sources (b).

But it does not appear that where only a security has been given by a client to his attorney for a debt really due, or for a reasonable reward for services already rendered, the Court will set such security aside, without directing an account to be taken of what is actually due (c).

The principle upon which Courts of equity relieve against securities taken by an attorney from his client, apply to all cases in which confidence is reposed by one party in the other; therefore the Court relieved against an agreement taken by a medical adviser from an aged patient, by which the former, in consideration of his past and future services, was to be paid £25,000 after the death of the latter. The Court was also of opinion that the agreement was void at law, as it was an inducement to the medical adviser to accelerate his patient's death (d).

A deed of gift of real estate from an aged and infirm person to his intimate friend and medical attendant was set aside for

Earl of Winchelsea v. Garetty, 1 My. & K. 253.

(z) *Welles v. Middleton*, 1 Cox, 112, 125, 3 P. Wms. 131, Cox's note (1); *Wood v. Downes*, 18 Ves. 126.

(a) *Jones v. Tripp*, Jac. 322; *Goddard v. Carlisle*, 9 Price, 169.

(b) See 1 Story's Eq. Jurisp. pl.

311, 320, pp. 249, 259.

(c) *Cheslyn v. Dalby*, 2 Y. & Coll. Exch. C. 170. See *Walmesley v. Booth*, 2 Atk. 27; *Bellew v. Russell*, 1 Ball & B. 107; *Montesquieu v. Sandys*, 18 Ves. 302.

(d) *Dent v. Bennett*, 7 Sim. 539; 4 My. & Cr. 269.

fraud; one of the circumstances in proof of fraud being that the deed stated, contrary to the truth, a money consideration (e).

A patient executed instruments whereby he secured to the defendant, his surgeon, an annuity of £100 during the life of the defendant, in consideration that the defendant would live with him and give him the benefit of his professional assistance during his life. Four days before the execution of such instruments, the defendant called in an eminent physician to visit the patient, who stated to the defendant his opinion that the patient could not recover nor live long; and about the same time, the defendant expressed to a witness in the cause, that the patient could not live more than a month or six weeks. The instruments, at the suit of the patient's executrix, were ordered to be delivered up to be cancelled, for there was little or no consideration for so large a gratuity, and the deeds could not be supported, even on the assumption of the capacity of the patient for business (f).

But the Court refused to set aside a voluntary deed executed by an old and infirm man, in favour of a person who had attended him as a surgeon, and had occasionally been consulted by him respecting the management of his property, and received the dividends of some stock for him, it appearing that the nature and effect of the deed were fully explained to the grantor by his solicitor, before he executed it of his own free will (g).

In cases of this kind the circumstances of each case must be carefully examined with the view of ascertaining whether an undue influence has been exerted, or an undue advantage taken, Lord *Brougham*, C., thought the rule could not be more precisely laid down than that where the known and defined relation of attorney and client, guardian and ward, trustee and *cestui que trust* exists, the conduct of the party benefited must be such as to sever the connexion, and to place him in the same circumstances in which a mere stranger would have stood, giving him no advantage, save only whatever kindness or favour

(e) *Gibson v. Russell*, 2 Y. & Coll. N. S. 104.

(f) *Popham v. Brooke*, 5 Russ. 9.

(g) *Pratt v. Barker*, 4 Russ. 507.

may have arisen out of the connection; and that where the only relation between the parties is that of friendly habits, or habitual reliance on advice and assistance, accompanied with partial employment in doing some sort of business, care must be taken that no undue advantage shall be made of the influence thus acquired (*h*).

A suit was instituted in the Court of Chancery of the Isle of Man for the purpose of setting aside two deeds, on the ground that the grantor in both of them was of unsound mind at the time that he executed them, and that they had been obtained from him by fraud and undue means. The decree ordered the two deeds to be vacated and set aside; from that decision there was an appeal to the King in Council. In this case an old man, feeble both in body and mind, separated from all his relations, without a friend to advise him, and surrounded by those only who were contriving to get his fortune, conveyed away nearly all that he was possessed of, even the house in which he lived, to persons not related to him, either in blood or connexion: and all his estate in lease was to become the property of the same strangers after his death. The consideration of 100*l.* was inserted for conveying away property worth 1,400*l.*; and such 100*l.* was not to be paid to the grantor, but to his executor after his death, without any interest being charged on it in the mean time—Lord *Wynford* said, the law will not assist a man who is capable of taking care of his own interests, except in cases where he has been imposed upon by deceit, against which ordinary prudence could not protect him. If a person of ordinary understanding, on whom no fraud has been practised, makes an imprudent bargain, no Court of justice can release him from it. Inadequacy of consideration is not a substantial ground for setting aside a conveyance of property (*i*). But those, who from imbecility of mind are incapable of taking care of themselves, are under the special protection of the law. The strongest mind cannot always contend with deceit and falsehood; a bargain, therefore, into which a weak one is drawn under the influence of either of these, ought not to be held

(*h*) *Hunter v. Atkins*, 3 My. & K. 140.

(*i*) *Sugd. Vend. & Pur. c. 5, s. 1.*

Gross inadequacy of consideration may afford evidence of fraud. *Gartside v. Isherwood*, 1 Br. C. C. 563.

valid, for the law requires that good faith should be observed in all transactions between man and man. If this conveyance could be impeached on the ground of the imbecility of the grantor only, a sufficient case has not been made out to render it invalid ; for the imbecility must be such as would justify the jury under a commission of lunacy, in putting his property and person under the protection of the Chancellor (*k*) ; but a degree of weakness of intellect, far below that which would justify such a proceeding, coupled with other circumstances, to shew that the weakness, such as it was, had been taken advantage of, will be sufficient to set aside any important deed. His Lordship, after noticing some suspicious circumstances, which would have been sufficient to invalidate the deeds, although the conveying party could not have been proved to be in such a state of mental imbecility as would have supported a commission of lunacy, concluded by observing, that all the facts united to form one consistent body of proof of imbecility in one party, and cunning and deceit in the others who were concerned in this transaction, and dismissed the appeal with costs (*l*).

An agreement to sue out a commission of lunacy is not illegal.
—By indenture made in 1827, between R. P. and his eldest son, D. P. reciting that R. P. P. of C. was seised of large real estates, was never married, and was then in a state of mental and bodily imbecility ; that in the event of his dying so seised, intestate and without issue, R. P. as his heir-at-law, would be entitled to the reversion of his estates in fee ; that R. P. was desirous of having a commission of lunacy sued out for the protection of R. P. P. and his property, and also of his own reversion, and D. P. at R. P.'s request, agreed to sue out and prosecute such commission, and take other necessary law proceedings at his own expense in R. P.'s name ; R. P., in consideration of the agreement, and of love and affection for D. P., covenanted to convey all the estates that would descend to him on the decease of R. P. P. to the use of himself for life, remainder to the uses expressed respecting the estate of R. in D. P.'s marriage settlement, being for the benefit of D. P. and

(*k*) See 2 Ves. sen. 409 ; *ante*, p. 113.

(*l*) *Blackford v. Christian*, Knapp's

Rep. of Cases before the Privy Council, 1 Vol. pp. 73—82. See *Griffith v. Robins*, 3 Madd. 191.

the heirs male of the marriage. The commission was accordingly issued; R. P. P. was declared a lunatic, and D. P. was reimbursed for his expenses out of his estate. R. P. was then sixty-three years of age; the lunatic was forty; D. P. was younger. The lunatic died in 1829, and R. P. entered into possession of his real estates, and conveyed them to his second son R. H. P., for valuable consideration. On a bill filed by D. P. to set aside that conveyance, and for specific performance of the covenant, R. P. by his answer said he entered into it without legal advice, and by fraud, imposition, and misrepresentation on the part of D. P. It was proved in evidence that both parties employed the solicitor who prepared the indenture under the advice of counsel for each; it was held, that the agreement to sue out the commission was not void or illegal for champerty or maintenance, or as against public policy, or a fraud on the jurisdiction in lunacy, or void for want of mutuality. Regard being had to the ages and relative situations of the parties, and to the benefits secured by the issuing of the commission, there was some, and not very inadequate consideration for the covenant (*m*).

By the law of Scotland, although facility of itself is not sufficient to set aside a deed, yet, if it be combined with any other circumstance, indicative of any undue advantage having been taken of the facile person, the deed is ineffectual; and where, upon the face of the transaction, it appears so grossly unequal and irrational, that it is plain it could only have been brought about by a fraudulent advantage having been taken of the facility of the grantor, it will be sufficient to avoid it (*n*). And it was held by the House of Lords, in a case on appeal from the Court of Session, that it was necessary to shew that a party who was proved to have been naturally weak in intellect and facile, but who was legally capable of making a deed, understood a deed executed by him; and that not having been done, it was set aside in favour of his heir (*o*).

(*m*) *Persse v. Persse*, 7 Cl. & Fin. 279.

(*n*) *McNeal v. Moir and Others*, 2 Shaw, 206.

(*o*) *Whyte v. Ballantyne*, 1 Shaw,

Rep. of Appeal Cases from Scotland, p. 472. See *Morrison v. Morrison*, 4 Bell. & M. 2nd. s. 337; *Horne v. Hardy*, Ib. 1184.

CHAPTER VII.

OF THE WILLS AND TESTAMENTS OF LUNATICS.

- 1.—*Of the capacity requisite for making wills, and the evidence of such capacity.*
- 2.—*The capacity of testators as to real estate, is determined at common law.*
- 3.—*Wills of real estate not set aside in equity, on the ground of insanity, without a trial at law.*
- 4.—*Of costs incurred in disputing wills, on the ground of the testator's insanity.*
- 5.—*Of wills made during lucid intervals.*
- 6.—*Of wills impeached on the ground of the partial insanity of testators.*
- 7.—*Jurisdiction of the Ecclesiastical Courts in determining the validity of wills of personality.*
- 8.—*Of the mode of proving and disputing wills in the Ecclesiastical Courts.*
- 9.—*Of the appointment of a receiver by the Court of Chancery, pending a suit in the Ecclesiastical Court, respecting the validity of a will.*
- 10.—*Of relief in equity, against a probate obtained by fraud.*
- 11.—*Of wills obtained through the agency of the party benefited, and by undue influence practised on persons of imbecile mind.*
- 12.—*Of depositing the testamentary papers of lunatics in the Master's office, and of granting probate of the wills, and letters of administration of the effects of lunatics.*



- 1.—*Of the capacity requisite for making wills, and the evidence of such capacity.*

Idiots, lunatics, and persons of unsound mind, are incapable of making wills of lands or chattels by common law ; and, by

the statute of wills (*a*), it is declared, that wills or testaments made of any lands or hereditaments by any idiot, or by any person *de non-sane memory*, shall not be taken to be good or effectual in the law.

Every person is presumed to be of sound mind until the contrary is proved; therefore, it is incumbent on the party attempting to defeat a will on the ground of the testator's insanity, to prove the existence of such disability (*b*).

It was observed by Sir *John Nicholl* in a recent case (*c*), that it is a great, but not an uncommon error, to suppose, that, because a person can understand a question put to him, and can give a rational answer to such a question, he is of perfect sound mind, and is capable of making a will for any purpose whatever, whereas the rule of law, and it is the rule of common sense, is far otherwise; the competency of mind must be judged of by the nature of the act to be done, and from a consideration of all the circumstances of the case. In *Combe's* case (*d*), it was agreed by the Judges, "that the sane memory for the making of a will is not at all times when the party can answer to any thing with sense, but he ought to have judgment to discern and to be of perfect memory, otherwise the will is void." And again, according to Sir *E. Coke* (*e*), "it is not sufficient that the testator have a memory, when he makes his will, to answer familiar and usual questions, but he ought to have a disposing memory, so that he is able to make a disposition of his lands with understanding and reason; and that is such a memory as the law calls sane and perfect." The question in these cases is, whether the testator was of sound and disposing mind when he made his will, having such a degree of recollection about him as would enable him to know what his property was, and who those persons were who then were the objects of his bounty (*f*).

(*a*) 34 & 35 Hen. 8, c. 5, s. 14.

(*b*) Swinb. on Wills, by Powell, 1 Vol. p. 119; *Evans v. Knight* and *Moore*, 1 Add. 382; 3 Hagg. Eccl. Rep. 598.

(*c*) 2 Hagg. Eccl. Rep. 122.

(*d*) *Moore's* Rep. 759; *S. C. Vin.*

Abr. tit. Devise (A.) pl. 22.

(*e*) *Marquis of Winchester's* case, 6 Rep. 23; *Hetl.* 120; 2 *Bulst.* 211; *Godolph. Orp. Leg.* 26, 27.

(*f*) *Greenwood v. Greenwood*, 3 *Curt. App.*

In one case it was laid down, that, although a man have a mind of sufficient soundness and discretion to regulate his affairs in general, yet, if such a dominion or influence be obtained over him as to prevent his exercising proper discretion in the making his will, he could not be considered as having such a disposing mind as would give effect to it, although the evidence to establish such a case was not determined; and that it was not necessary to go so far as to make a man absolutely insane, so as to be an object for a commission of lunacy, in order to determine the question whether the testator was of sound and disposing memory and understanding; a man perhaps might not be insane, and yet not equal to the important act of disposing of his property by will (*g*).

In a case decided by the judicial committee of the Privy Council, their Lordships were of opinion, that, in order to constitute a sound disposing mind, a testator must not only be able to understand that he is by will giving the whole of his property to one object of his regard, but that he must also have capacity to comprehend the extent of his property, and the nature of the claims of others, whom, by his will, he is excluding from all participation in that property; and, that the protection of the law is in no cases more needed than it is in those where the mind has been too much enfeebled to comprehend more objects than one; and more especially when that one object may be so forced upon the attention of the invalid, as to shut out all others that might require consideration. And, therefore, the question which their Lordships proposed to decide in that case was, not whether the testator knew, when he executed the will, that he was giving all his property to his wife, and excluding all his other relations from any share in it; but, whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose of excluding them from any share of his property. If he had not the capacity required, the propriety of the disposition made by the will is of no im-

portance. If he had it, the injustice of the exclusion would not affect the validity of the disposition, though the justice or injustice of the disposition might cast some light upon the question as to his capacity (*h*).

The degree of capacity necessary to a testamentary act, must depend partly upon the nature of the act to be done, and partly upon the other accompanying circumstances (*i*).

If the party, relying upon the testator's insanity, prove its existence before the making the will in question, the law will presume the continuance of the disorder at the time of making such will, until the contrary be shewn, unless, indeed, the attack was only of a slight nature, of short duration, or owing to some accidental cause which had been removed, or a long period had elapsed since the commencement of such temporary disorder, and the making of the will (*k*).

Where habitual insanity does not exist, the proof of actual insanity at the time must come from the party who impeaches the will (*l*).

Although an idiot is incapable of making a will, yet, he that is only of a mean capacity or understanding, or one who is, as it were, between a man of ordinary capacity and an idiot, is not prohibited from making a will or testament, if he has sufficient understanding to comprehend its nature and effect. If an idiot make a will, reasonable and wise in itself, it will not be valid; for the presumption of law is against the validity of all the legal acts of an idiot (*m*); but if it be shewn, that a rational will proceeded from, and was dictated by, a person commonly reputed to be an idiot, it would be strong evidence to prove that he was not so.

An old man, become childish, and so forgetful as not to remember his own name, cannot make a will; neither can a drunkard, who, by excessive intoxication is deprived of the

(*h*) *Harwood v. Baker*, 3 Moore, P. C. 290; See *Goldie v. Murray*, 6 Jur. 608.

(*i*) *Blewitt v. Blewitt*, 4 Hagg. 419.

(*k*) Swinb. on Wills, by Powell, 1 Vol. p. 120; *Groom and Evans v.*

Thomas and Thomas, 2 Hagg. Eccl. Rep. 433; see *ante*, p. 58.

(*l*) *Chambers and Another v. Queen's Proctor*, 2 Curt. 441.

(*m*) Swinb. on Wills, by Powell, 1 Vol. p. 128; *Shepp. Touchst.* 403.

use of his understanding and reason (*n*). Intoxication is in truth temporary insanity: the brain is incapable of performing its proper functions; there is temporary mania; but that species of derangement, when the exciting cause is removed, ceases, and sobriety brings with it a return of reason (*o*).

Where a person is in full possession of his intellects, the mere act of execution would lead to the inference that he knew the contents of the instrument he signed; where the person is of a lower grade of capacity owing to age or intemperance, a very different degree of proof is required to satisfy the Court that the instrument contains the real intentions of the deceased (*p*).

But where no fixed and settled delusion is shewn, and consequently no decided insanity, and an extravagant act of a party can be accounted for by the excitement of liquor, while at all other times his mind was sound; in order to avoid a will made by him, it must be proved that he was so excited by liquor, or so conducted himself during the particular act, as to be at that moment legally disqualified from giving effect to it (*q*).

A testator must have perfect ability and capacity in point of discretion and understanding, as a rational man, at the time of executing his will; for, if a man be *non compos mentis* at that time, though he afterwards become a man of sound judgment and memory, yet the will is void, unless it be executed after he recovered his senses (*r*). If a man of sound mind makes his will, and afterwards becomes *non compos mentis*, he cannot revoke it during the continuance of such disability; and a subsequent loss of intellect being a disability arising by the act of God, is no revocation (*s*). For supporting the validity of the will, notwithstanding the subsequent incapacity of the testator, the rule of the common law is conformable to the civil, "*Nam*

(*n*) 8 Rep. 22, 23.

(*o*) Fonbl. Treat. on Eq. pp. 67, 68, 5th ed.; 3 Hagg. Eccl. Rep. 602.

(*p*) *Durling v. Loveland*, 2 Curt. 229.

(*q*) 3 Hagg. Eccl. R. 608. See

Cory v. Cory, 1 Ves. sen. 19; 3 P. Wms. 130, n. (A).

(*r*) 11 Mod. 157; Shep. T. 413; 1 Sid. 162.

(*s*) 4 Rep. 61 a.

neque testamentum recte factum, neque ullum aliud negotium recte gestum, postea furor interveniens perimit" (t).

A testator executed a will, and thereupon destroyed a former will, and subsequently executed two other wills. The last will was propounded, but abandoned. A decree then issued, calling on all parties interested to show cause why probate of the instructions for the first will should not be granted; and the Court on the proof *per testes*, that the instructions were of the same effect as the first will, that such will was executed when the deceased was sane, but destroyed, and the other wills executed when the testator was insane, pronounced for the instructions, and refused costs out of the estate to persons in distribution, who, by interrogatories, set up insanity when the first will was executed (u).

To all persons who are in any degree conversant with proceedings in Courts of justice, it is well known that, upon the point of capacity, evidence apparently the most contradictory frequently occurs; which may easily be accounted for, without imputing to either set of witnesses intentional falsehood. In the first place, it may be observed, that a large portion of evidence as to capacity, is evidence of mere opinion; and upon matters of opinion mankind differ even to a proverb. In the next place, there is no *fixed* standard by which each witness forms his opinion of capacity; one person seeing a testator in extreme age or under extreme sickness, thinks, that if he knows those about him, and can answer an ordinary question with respect to the state of his illness, or of his wants, such and similar matters render him capable of giving effect to a disposition by will, however complicated it may be, by the mere formal execution of the instrument; while another person may be of opinion, that though a testator, in the ordinary management of his affairs, can hold reasonable conversation, can fully comprehend all the usual and simple transactions of life, yet, if he is unable to take the active management of all his concerns, however involved those concerns may be, or if he is liable to become confused by entering into intricate transactions, he is

(t) Inst. lib. 2, tit. 12, s. 1.

(u) *In re Brand*, 3 Hagg. Eccl. R. 754.

totally incapable, and cannot enter into a testamentary disposition, however plain and simple it may be. Now, where opinions are formed by such different standards, it is obvious that much contrariety will occur (*v*). Sir *John Nicholl* observed, that experience in the Ecclesiastical Courts teaches us, that evidence upon questions of capacity is almost always contradictory, such evidence being commonly that of opinion merely; and this contrariety proceeds from the obvious grounds, that, of the witnesses, no two, possibly, have seen the party whose state is deposed to, at precisely the same time, and under precisely the same circumstances; and that each, again, of the several witnesses, however numerous, measures, possibly, testamentary capacity by his own particular standard. These sources of discrepancy, and many more might be enumerated, are common to all cases of this description. There is an additional source, when the transaction of which they have to speak is remote, a circumstance sufficient in itself to account for a no inconsiderable degree of contrariety of evidence, even where the witnesses have to speak of *facts* merely, and not to opinions formed, and inference built, upon facts, of which most of the evidence furnished on questions of capacity is commonly made up. If the Court, therefore, on questions of capacity, generally, is accustomed to rely but little on such evidence, so far as it is that of *mere* opinion, but to form its own judgment from the facts and the conduct of the parties at the time—it becomes it to do so, more peculiarly where much of the evidence not merely consists of opinions delivered long subsequently to the transactions which they profess to have suggested them—upon loose recollections too, and after repeated discussions of the subject-matter with interested parties (*w*).

In a case where there was great conflict of opinion amongst the witnesses, as to the capability of a testator, some being of opinion that he was decidedly incapable; some, that his capacity was in no degree affected; others, that, though capable, his mind was shaken—Sir *John Nicholl* said, the just result is, that the testator's faculties were in a degree damaged and de-

(*v*) *Kinleside v. Harrison*, 2 Phill. Eccl. R. 456, 457.

(*w*) *Evans v. Knight*, 1 Add. 239, 240.

teriorated, but that he was not intestable ; that his capacity was so far impaired and fluctuating, that the Court would require not only the mere fact of execution, but also satisfactory evidence of instructions, and proof of volition and intention (*x*).

Where a length of time has been suffered to elapse, witnesses even to facts will be inaccurate, and the Court must be prepared for variation in the relation of circumstances by the most credible and most respectable ; but what is the Court to expect upon matters not of fact, but of opinion, when parties have enlisted themselves, as it were, on one side or the other ? In all cases of opinion as to capacity, the Court invariably finds conflicting evidence ; the person is seen at different times and under different circumstances ; and, therefore, where a great number of the witnesses describe a testator as being in a state of absolute fatuity and idiocy, others assert that his mind was not at all deteriorated ; others, again, take a middle course ; and there is no reason to suppose that such opinions are not sincerely given—the Court can only reconcile them by supposing that his capacity fluctuated ; but, it may at the same time judge a little of the credit due to the different opinions, from observing how the facts are laid (*y*). The test of collateral circumstances may also assist in forming a right conclusion (*z*).

Witnesses speaking to transactions and conduct spread over many years, and not to specific facts fixed by time, place, and circumstances, are apt to describe occasional extravagances as constant and perpetual habits (*a*).

The criterion by which the capacity of a testator is to be examined, especially where there is much contradictory evidence, can only be drawn from his acts. The mere opinions of witnesses on this point, being drawn from very different standards, are of little weight, and must fluctuate, from their different abilities to form an opinion, from their different opportunities of seeing the person, and from the different condition of the testator's mind or humour at different times. Thus, the capacity of a testator of a very advanced age, and

(*x*) *Williams v. Goude and Ben-*
net, 1 Hagg. Eccl. Rep. 594, 595.

(*y*) 1 Hagg. Eccl. Rep. 589—591.

(*z*) *Ante*, pp. 61—64.

(*a*) 3 Hagg. Eccl. Rep. 603.

subject to occasional incapacity from violent nervous attacks, was established on the proof of acts inferring his general possession of reason, notwithstanding much conflicting evidence of witnesses (*a*). Lord *Redesdale* seems to have expressed an opinion, that a person might be capable of making a codicil to his will, though not of doing any thing which requires deliberation, as a bargain (*b*).

The manner in which a will has been written and executed, and the contents of the will itself, coupled with the situation of the testator, and the circumstances under which it was made, afford important evidence as to his capacity (*c*).

And it seems that, from such evidence alone, where the terms of the supposed will are such as tend to exclude the supposition of the maker's sanity, the jury may decide against the validity of the will. But it is clear, on the other hand, that it is not sufficient to shew that the dispositions of the will are imprudent and unaccountable (*d*). It was said by Lord *Eldon*, that subsequent papers written by a testator, though evidence of his competence, are regarded with considerable jealousy (*e*). There are cases of wills being established, which were made during the intervals of delirium, because they have contained internal evidence of their being reasonable, and such as a man in his senses may be supposed to have made. So, the question must depend materially on the will itself, the circumstances of its attestation, and its reasonableness, which may be such as to establish the will without any dispute (*f*).

In one case, where it was admitted that, according to the coroner's inquest, the testator must be taken to have been insane at the time he committed an act, in consequence of which he died—it was said, that it did not follow that he continued insane during the whole interval from the commission of that act to his death, or that he was so at the time of making his will (*g*).

And in one case, where there was no evidence of the

(*a*) *Kinleside v. Harrison*, 2 Phill. Ecc. R. 449—574.

(*b*) 2 Dow, P. C. 283. See 2 P. Wms. 270; 1 Eq. Cas. Abr. 406.

(*c*) 9 Ves. 610. See *post*, p. 382.

(*d*) *Burr v. Davall*, 8 Mod. 59.

(*e*) 19 Ves. 506.

(*f*) *Levy v. Lindo*, 3 Mer. 85.

(*g*) *Ibid.* See *ante*, pp. 65, 66.

deceased's insanity at the time of or prior to instructions for his will, the commission of suicide, three days afterwards, was held not to invalidate the paper by raising an inference of previous derangement (*h*).

So the Court pronounced in favour of a will executed by a testator, who for three days previously was labouring under certain delusions, and who destroyed himself on the day following the execution of his will (*i*).

It has been observed "that if the will be a rational act, rationally done, a suicidal act or attempt ought not to invalidate it, because the presumption is, either that the will was made before the mind became impaired, or that the derangement was of a kind that did not prevent the judgment from using its ordinary discretion in the final disposition of property. If, on the contrary, it be an unreasonable act, and especially if it be contrary to the previously expressed intentions of the testator, then the act of suicide will be in itself strong proof that the mind was impaired at the time of making the will" (*k*).

In a case, where the attesting witnesses to a will, who were disinterested medical men, gave evidence strongly in favour of the testator's sanity, the Ecclesiastical Court would not set aside the will on proof by interrogatories, without plea, that the deceased, many years before, had been under an insane delusion (*l*).

Where clear, decided, and undoubted insanity has been established to have once existed before the contested transaction, acts otherwise of a doubtful character may become of more force in proof of its existence at the time in question than if no previous derangement had appeared. Even acts decidedly of an insane character, occurring after the transaction, may reflect back upon acts otherwise equivocal, about the time of the transaction itself, or on the general deportment of the party; but, where there are no decided acts proved ever to have taken

(*h*) *Burrows v. Burrows*, 1 Hagg. 94.
Eccl. R. 109.

(*i*) *Chambers and Another v. Queen's Proctor*, 2 Curt. 415. See *Brooks v. Barret*, 7 Pickering, R.

(*k*) Ray's Medl. Jurisp. of Insanity, s. 287, p. 346.

(*l*) *Kemble and Smales v. Church*, 3 Hagg. Eccl. Rep. 273.

place, when all the acts are equivocal, when they may be attributed to other causes, to violent passion, to intoxication, operating upon a mind naturally excitable—it does not appear that, in any case, such equivocal acts, however numerous, have been held to establish insanity (*m*).

2. *The capacity of testators as to real estate is determined at common law.*

Non compos mentis is a common law disability, with respect to every disposition of property, and, consequently, what shall be considered a sound and perfect memory at the time of devising lands, is a question determinable at common law (*n*).

A Court of equity will not interfere in setting aside devises of land, until they have been determined invalid by a Court of law. A devisee of real estate, having filed a bill against the heir of the devisor, to be put into possession of the property devised; and the heir, by his answer, having denied the validity of the will, alleging that it was obtained by circumvention and fraud, when the testator was *in extremis*, and not of sufficient capacity, or of disposing memory—the Court was of opinion, that the suit could not be proceeded in, since, when any doubt existed as to the evidence, it was an invariable rule not to establish a will against the heir without a trial at law, and the House of Lords would reverse a decree pronounced in breach of the established practice (*o*).

3. *Wills of real estate not set aside in equity without a trial at law.*

It seems to be a well established principle, that a will of real estate cannot be set aside in equity, on the ground of fraud or imposition, without having been first tried at law on an issue *devisavit vel non*; the subject being proper for the inquiry of a jury (*p*). A bill was filed by an heir-at-law, charging fraud

(*m*) 3 Hagg. Eccl. Rep. 599, 600. p. 113.

(*n*) 6 Rep. 23 b.

(*o*) *Dawson v. Chater*, 9 Mod. 90;
13 Ves. 297. See *Earl of Fingal*
v. Blake, Molloy's Rep. temp. Hart,

(*p*) *Bransby v. Kerrich*, 2 Eq.
Cas. Abr. 406; 7 Bro. P. C. 437,
Toml. ed.; 2 Atk. 324.

and circumvention in obtaining a will, and insanity on the part of the testatrix. Lord *Hardwicke* said, he could not make a determination without a trial at law, which was accordingly directed (*q*). But an heir-at-law cannot proceed *in equity* for setting aside a will, unless there is some *legal obstacle* in the way of his bringing an ejectment (*r*). Where a bill is filed by an heir-at-law against a devisee, to try the validity of a will of real estate, the Court, under special circumstances, will direct an issue *devisavit vel non* on motion before the hearing (*s*). To a bill filed in a Court of equity for the purpose of setting aside a will, on the ground of insanity, may be pleaded, that the will was duly executed, and ought to prevail until declared invalid by a Court of law (*t*). In one case a will of land was set aside after forty years' possession under it, on account of the insanity of the devisor, and to the prejudice of a purchaser (*u*). But an heir-at-law contesting his ancestor's will, in a suit to establish it in equity, is not *entitled* to an issue *devisavit vel non* to try the validity of it in a Court of law in all cases, and at any distance of time, but generally will be precluded by the acquiescence of twenty years, which would bar his possessory rights at law, or if his delay put the adverse parties in a much worse situation than they would have been in if he had disputed the will originally (*v*).

A Court of law will not set aside a will on the ground of *non compos mentis*, if the party knew perfectly what he was doing when it was made. The widow of Mr. Bennet claimed the whole of her husband's property under his will. Bennet had been greatly debilitated in mind and body by habits of debauchery, and the woman effected her marriage with him by

(*q*) *Webb v. Claverden*, 2 Atk. 423.
See *Id.* 324.

(*r*) *Jones v. Jones*, 7 Price, 663;
Jones v. Frost, Jac. Rep. 466. See
Pemberton v. Pemberton, 13 Ves.
297, 298; *Middleton v. Sherburne*,
4 Y. & Coll. 358.

(*s*) *Middleton v. Sherburne*, 4 Y. &
Coll. 358; see *Fullagar v. Clarke*,
18 Ves. 481; *Goulden v. Lydiat*, 4
Y. & Coll. 374 n. (a).

(*t*) *Anon.* 3 Atk. 17.

(*u*) *Squire v. Pershall*, Vin. Abr.
title "Devise," Z (2), pl. 13. The
verdict against the will, in this case,
was obtained by default, on an issue
directed by the Court of Chancery,
2 Bro. P. C. 396, Toml. ed.

(*v*) *Tucker and Others v. Sanger*
and Others, 1 M'Clel. 424; S. C.
13 Price, 119; see *Whitaker v.*
Newman, 2 Hare, 299.

getting into lodgings opposite to him at Bath; she obtained a great degree of influence over him; and immediately after the marriage, turned away all his old servants. Lord *Thurlow* was much against the will, and two issues were directed as to its validity, in both of which it was established. *Fyre*, C. J., before whom it was tried, stated to the jury that the point was, whether the testator knew *perfectly what he was doing*, and that they were not to enter too minutely into considerations of influence (*w*).

In another case, the plaintiff, a devisee, sought by his bill to establish a will; the defendant, the heir-at-law, was an infant, and insisted that the testator was insane when he made the will. From the evidence adduced in the cause, it was clear the testator was not insane. Sir *J. Leach*, V. C. said—"An heir is, in these cases, entitled to an issue *devisavit vel non*; the Court cannot refuse it if asked for; but, if the counsel for the infant heir is clear, from the evidence, that there is no ground to impeach the will, he is well justified in declining to ask for an issue" (*x*).

To prevent the frauds consequent upon the secret manner in which wills were formerly executed, the statute of frauds (*y*) required every will disposing of real estate to be in writing, and signed by the devisor, and attested and subscribed in his presence, by three credible witnesses. No will or codicil, whether affecting real or personal property, made on or after 1st January, 1838, is valid unless it be signed at the foot or end thereof, by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and such witnesses shall attest, and shall subscribe the will or codicil in the presence of the testator (*z*). In the construction of the statute of frauds, it has been holden, that the Legislature, when it required the witnesses to attest the signing, must, by implication, have required them to attest the capacity of signing; for,

(*w*) *Bennet's case*, cited 9 Ves. 185; S. C. 1 Cox, 353.

(*x*) *Levy v. Levy*, 3 Madd. 245.

(*y*) 29 Car. 2, c. 3, s. 5.

(*z*) 7 Wm. 4 & 1 Vict. c. 26, s. 9.

it was not merely the abstract act or form of signing which the Legislature intended as one necessary solemnity to the constitution of a devise, for, an idiot or lunatic might put his name to an instrument, and yet be perfectly ignorant of its contents; but the Legislature, in the word "*signing*," comprehended another idea, namely, signing an instrument, intending it to be a will; consequently, the mental power or capacity of willing was necessary, as well as the corporal power of putting the mark or name to constitute a signing. The business, then, of the persons required by the statute to be present at executing a will, is not barely to attest the corporal act of signing, but to try, judge, and determine, whether the testator is *compos* to sign (*a*); sanity is the great fact which the witness has to speak to, when he comes to prove the attestation, and that is the true reason why a will can never be proved as an exhibit *vivâ voce* in Chancery, though a deed may; for there must be liberty to cross-examine as to sanity (*b*). In conformity to this doctrine, it was said by Lord *Hardwicke*, C., (*c*), that it had been determined over and over again, in the Court of Chancery, that it must be shewn that the devisor was of sound and disposing mind when a will was to be established as to real estate; proving that it was well executed, according to the statute of frauds and perjuries, was not sufficient. It is not sufficient that the testator be corporally present when he signs his will, if, in truth, he be in a state of insensibility, and, consequently, absent as to mental purposes (*d*). The execution of a will, disposing of real estate, is to be proved by the subscribing witnesses, if they are alive, and can be produced. On a trial at common law, all the circumstances may be proved by a single witness, provided there were actually three witnesses, as the statute of frauds requires (*e*). But, though the devisee need not call more than one witness, the opposite party may call the other subscribing witnesses. Should one of the witnesses refuse to swear that he saw the testator publish his will, if that fact

(*a*) *Harris v. Ingledew*, 3 P. Wms. 93; see *Freshfield v. Reid*, 9 Mees. & W. 404.

(*b*) *Hindson v. Kersey*, 4 Burn's

Eccl. Law, 102.

(*c*) *Wallis v. Hodgeson*, 2 Atk. 56.

(*d*) *Right v. Price*, 1 Dougl. 241.

(*e*) *Anstey v. Dowsing*, 2 Str. 1254.

can be proved by other sufficient testimony, the fraud of the obstinate witness will not be sufficient to defeat the testator's will (*f*). In the Court of Chancery, it is the general rule never to establish a will, unless all the witnesses are examined : because the heir has a right to evidence of sanity, from every one of those whom the statute has placed round his ancestor, as guards against fraud. This is not a mere technical rule. The design of the statute was to prevent wills which ought not to be made ; and operates silently, but forcibly, by intestacy (*g*). But, though the general rule of the Court of Chancery be, that all the subscribing witnesses must be examined (*h*) ; yet it would be laying down the rule too largely to say, that in no case can a will be proved in equity, without such complete examination (*i*). In a case, where an heir-at-law filed a bill to set aside a will, and the Court directed an issue to try the capacity of the testator, and all the subscribing witnesses to the will had not been examined on the trial, it was held, on a motion for a new trial, that the rule did not apply to the case of an heir attempting to impeach a will. In this case it was observed, by *Tindal*, C. J., " It may be taken to be generally true, that in cases where the devisee files a bill to set up and establish the will, and an issue is directed by the Court upon the question *devisavit vel non*, the Court of Chancery will not decree the establishment of the will, unless the devisee has called all the subscribing witnesses to the will, or accounted for their absence. And there is good reason for such a general rule : for, as a decree in support of the will is final and conclusive against the heir, against whom an injunction would be granted if he should proceed to disturb the possession after the decree, it is but reasonable that he should have the opportunity of cross-examining all the witnesses to the will before his right of trying the title of the devisee is taken from him. In that case, it is the

(*f*) *Dayrell v. Glasscock*, Skinn. 413 ; *Pike v. Balderming*, cited 2 Str. 1098.

(*g*) *Hindson v. Kersey*, 4 Burn's Eccl. Law, 97—102 ; *Bootle v. Blundell*, 19 Ves. 500 ; *S. C. Coop.*

C. C. 138.

(*h*) *Townsend v. Ives*, 1 Wils. 216 ; *Ogle v. Cook*, 1 Ves. sen. 177.

(*i*) *Powell v. Cleaver*, 2 Bro. C. C. 503.

devisee who asks for the interference of this Court; and he ought not to obtain it until he has given every opportunity to the heir-at-law to dispute the validity of the will. This is the ground upon which the practice is put in the cases of *Ogle v. Cooke*, 1 Ves. sen. 178, and *Townsend v. Ives*, 1 Wils. 216. But it appears clearly from the whole of the reasoning of the Lord Chancellor in the case of *Bootle v. Blundell*, 1 Mer. 193, Coop. C. C. 136, that this rule, as a general rule, applies only to the case of a bill filed to establish the will (*an establishing bill*, as Lord *Eldon* calls it in one part of his judgment), and an issue directed by the Court upon that bill. And even in cases to which the rule generally applies, this Court, it would seem, under particular circumstances, may dispense with the necessity of the three witnesses being called by the plaintiff in the issue; as in *Lowe v. Jolliffe*, 1 W. Bl. 365, Reg. Lib. B. 1761, fol. 130; see *ante*, p. 61. Now, in the present case, the application to this Court is not by the devisee seeking to establish the will, but by the heir-at-law calling upon this Court to declare the will void, and to have the same delivered up. The heir-at-law does not seek to try his title by an ejectment, and apply to this Court to direct that no mortgage or outstanding terms shall be set up against him to prevent his title from being tried at law, but seeks to have a decree in his favour, in substance and effect to set aside the will. This case, therefore, stands upon a ground directly opposed to that upon which the cases above referred to, rest. So far from the heir-at-law being bound by a decree which the devisee seeks to obtain, it is he who seeks to bind the devisee; and such is the form of his application, that if he fails upon this issue he would not be bound himself, for the only result of a verdict in favour of the will would be, that the heir-at-law would obtain no decree, and his bill would be dismissed, still leaving him open to his remedies at law. No decided case has been cited in which the rule has been held to apply to such a proceeding; and certainly neither reason nor good sense demands that this Court should establish such a precedent under the circumstances of this case" (*k*).

(*k*) *Wright v. Tatham*, 2 Russ. & M.; see pp. 13—15.

It was long ago held, that when the best endeavours have been used to discover and bring forward a witness, if those efforts are fruitless, the witness may be considered as dead (*l*). The rule, that the proof of the death of an attesting witness must be positive (*m*), is to be understood with some qualification; for, where one of the witnesses to a will of real estate had since become insane, proof of the handwriting of such witness was allowed, as if he were dead (*n*).

A person who signs his name as witness to a will, by this act of attestation solemnly testifies the sanity of the testator. Should such witness afterwards attempt to impeach his own act, and to prove that the testator did not know what he was doing when he made (what purported to be) his will, though such testimony will be far indeed from conclusive (*o*), and Lord *Mansfield* even held, that a witness impeaching his own acts, instead of finding credit, deserved the pillory (*p*)—yet, Lord *Eldon* has not gone so far in exclusion of such evidence, admitting, however, that it is to be received with the most scrupulous jealousy (*q*). Sir *John Nicholl* has perhaps laid down the most distinct rule, namely, that such testimony is not to be positively rejected; but, at the same time, no fact stated by a witness open to such just suspicion can be relied on, where he is not corroborated by other evidence (*r*). In a case pregnant with appearances of fraud, and resting for support on the attesting witnesses alone, these witnesses must be beyond suspicion; if at all shaken in credit, no part of their evidence can be relied on (*s*). It is possible, that a testamentary

(*l*) *Anon.* Godbolt, 326; *M'Kenire v. Fraser*, 9 Ves. 6.

(*m*) *Bishop v. Burton*, Comyn, Rep. 614. And see *Burrowes v. Lock*, 10 Ves. 474; 2 Br. C. C. 504; *Lord Carrington v. Pagne*, 5 Ves. 411.

(*n*) *Bernett v. Taylor*, 9 Ves. 382; *Currie v. Child*, 3 Camp. 283.

(*o*) *Hudson's case*, Skinn. 79; *Digg's case*, cited *ibid*.

(*p*) *Walton v. Shelley*, 1 T. R. 300; *Lowe v. Jolliffe*, 1 Sir W. Bl. 366;

Rex v. Nueys and Gale, Id. 416; *Lowe v. Jolliffe*, 1 Dick. 389; *Goodtitle v. Clayton*, 4 Burr. 2225.

(*q*) *Bootle v. Blundell*, 19 Ves. 504; *Howard v. Braithwaite*, 1 Ves. & Bea. 208.

(*r*) *Kinleside v. Harrison*, 2 Phill. Eccl. C. 499. And see *Burrows v. Lock*, 10 Ves. 474; *Young v. Richards*, 2 Curt. 373; *Pennant v. Kingscote*, 3 Curt. 642.

(*s*) *Brydges v. King*, 1 Hagg. Eccl. R. 288.

instrument may be established against the evidence of all the subscribing witnesses; but such a case would require strong supplementary circumstances—would require to be supported by the whole *res gestæ*, by strong probability arising from the conduct of all parties, and by the improbability of the practice of any fraud or circumvention, or the exercise of undue influence (*t*). And it has been lately decided, that a will may be pronounced for though both the attesting witnesses depose to the incapacity of the deceased (*u*). The issue *devisavit vel non* always implies in it, where the execution is not the point in issue, a question of the capacity of the testator; that is, either his absolute capacity, or his relative capacity, where it is supposed that the particular instrument was the effect of that undue influence, which necessarily implies a degree of weakness at the time, and *quoad* that instrument, making it not an instrument arising from the fair bias of his own mind, but from the exercise of that improper influence (*v*). Where the evidence proves the execution of a will, but the witnesses have not been examined as to the sanity of the testator, the cause will be adjourned at the hearing, and liberty will be given to exhibit an interrogatory to prove his sanity (*w*).

Where a Court of law has decided in favour of a will, objected to on the ground of the testator's insanity, a Court of equity will not direct a second trial without strong reasons. Evidence of a testatrix being of unsound mind shortly after the execution of her will, is not a sufficient ground for granting a new trial to try the validity of the will (*x*).

In another case a bill was filed by the devisees, under the will of Lord *Chedworth*, to have the will established, and the trusts carried into execution. An issue *devisavit vel non* was desired by the heir-at-law, suggesting incompetency in the testator. Upon the trial of that issue, in the Court of King's

(*t*) *Per* Sir *J. Nicholl*, 2 Hagg. Eccl. R. 219; see *ante*, p. 61.

(*u*) *Le Breton v. Fletcher*, 2 Hagg. Eccl. R. 568; see *Gove v. Gawen*, 3 Curt. 151.

(*v*) *Bates v. Graves*, 2 Ves. jun. 288, 289.

(*w*) *Abrams v. Winshup*, 1 Russ. 526; *Wallis v. Hodgeson*, Id. 527, n.; S. C. 2 Atk. 56; see Dan. Ch. Pr. 819; 2nd. ed.

(*x*) *Warn v. Swift*, Law J. 1831, Ch. 203.

Bench, a verdict was found, establishing the will upon very clear and strong evidence of capacity apparent from the conduct of the testator, particularly his acting as a magistrate, and as chairman at the quarter sessions, and performing his duties in the House of Lords, opposed only by some circumstances of eccentricity and irregularity in dress, which came out principally upon the cross-examination, his heir having examined only one witness. A motion was made by the heir-at-law for a new trial, upon a suggestion of the expectation of further evidence, and an affidavit by Dr. Parr, expressing his opinion that the testator had not been of a perfectly sound mind, from a propensity to insanity, perhaps subsisting from his birth, and promoted by certain circumstances of his life. On the other side, several letters from Dr. Parr to the testator were produced, consulting him upon subjects of literature, expressing in strong terms an opinion of his good sense and talents, and in one instance, recommending a clergyman for a living in his Lordship's gift, the offer of which Dr. Parr declined for himself. Lord *Erskine* said, that he should be very sorry to find a rule in the Court of Chancery, that there must be a second trial of an issue if desired, without any ground laid for it. And in a case, therefore, of a man exercising all the great public duties, which it was proved the testator in that case did, it must be shewn that he, nevertheless, had a morbid image in his mind upon a particular subject, so wide from sound understanding, that he ought not to be considered in that state; but there being no evidence of the existence of such a morbid image connected with the will in question, a new trial was refused; and, as it did not appear that the heir-at-law had wickedly and fraudulently contested the will, he was not ordered to pay the costs of the issue (y).

Where an issue *devisavit vel non* has been directed upon a bill filed to establish a will, and a verdict in favour of it obtained—the Court will not grant a new trial if satisfied, after consideration of all the facts of the case, that the first verdict is a just one (z).

(y) *White v. Wilson*, 13 Ves. 87; 624; see *Lorton v. Lord Kingston*, 4 Clark & Fin. 260; *Bootle v. Blundell*, 19 Ves. 494.
 see *Pemberton v. Pemberton*, Id. 290.

(z) *Wilson v. Beddare*, 5 Jur. R.

4. *Of costs incurred in disputing wills on the ground of the testator's insanity.*

If a devisee brings a bill merely *in perpetuam rei memoriam*, and the heir-at-law does nothing more than cross-examine the witnesses who are produced to confirm the will, he is entitled to his costs (a). If he examines witnesses to encounter the will, then he shall not have his costs where the bill does not pray relief, nor is brought to a hearing; if the heir-at-law has an issue directed to try the will, and the will is established, as he has a right to be satisfied how he is disinherited, he shall have his costs. If he sets up insanity or any other disability against the person who made the will, and fails, he shall not have his costs; but it must be a strong case to induce the Court to give costs against him, as spoliation or secreting the will (b).

Where a bill was filed by an heir-at-law, charging fraud and circumvention in the defendant in obtaining the will, and insanity in the testatrix—Lord *Hardwicke* decreed costs against the plaintiff, observing, that it was such vexation in an heir-at-law, to bring a bill to set aside a will for insanity in the testator, when he might have proceeded at law by ejectment, that, if he failed, he should pay the costs of controverting the will. But where an heir is brought before the Court as defendant, even though he should insist upon the will being fraudulent, or the testator being insane, and an issue is directed to try the fraud or insanity, yet the Court of Chancery will not give costs against him, though he fail in the attempt of overturning the will, but very often allows the heir his costs (c).

If an heir-at-law, alleging insanity in a deviser, file his bill against the devisee, and he fail in the issue *devisavit vel non*, he shall pay the costs of the issue, but not the costs of the suit

(a) *Vaughan v. Fitzgerald*, 1 Sch. & Lef. 316; *Blinkehorne v. Feast*, 1 Dick. 153; *Turner v. Turner*, Id. 313.

Wms. 285; *Luxton v. Stephens*, 3 P. Wms. 374; *Barney v. Eyre*, 3 Atk. 387.

(c) *Webb v. Claverden*, 2 Atk.

(b) *Biddulph v. Biddulph*, 2 P. 424.

in equity, unless he might have asserted his claim by ejectment; and then his suit will be deemed vexatious, and he will be ordered to pay the costs of it (*d*).

In a case where it was not clear, by reason of alleged mortgages, that the plaintiff, an heir-at-law in a suit to set aside a will, could have proceeded by ejectment, and the nature of the case made it reasonable that the heir-at-law should have full opportunity to investigate the circumstances under which the will was made, the suit was not considered vexatious; and on the bill being dismissed, the plaintiff was only ordered to pay the costs of the issue (*e*).

The practice is well established, that, where a bill is filed against an heir-at-law, praying relief, as to have the trusts of a will carried into execution, if he, who has a great interest in the inheritance, and is favoured by the law, cross-examines, he is entitled to his costs; being brought into equity, in order that the will may be established against him; and having a right to see whether he is disinherited or not. If he chooses to examine witnesses himself, the question of course will depend upon the circumstances. But the heir is indulged in going a step farther. On account of the frail and imperfect mode of examination into facts in the Court of Chancery, he has a right, *ex debito justitiæ*, to demand an issue; and if he does, setting up insanity, he shall not have costs unless he establish it; and if it appear, that, knowing the deviser was perfectly sane, he set up that pretext, he would fall within the scope of Lord *Hardwicke's* exception (*f*).

Where a bill was filed by the devisees under a will against the heiress-at-law, for establishing the will, and she insisted on the testator's insanity, and on an issue *devisavit vel non*, a verdict was given in favour of the will, the heiress-at-law was allowed all her costs in equity, on the common principle that she was merely cross-examining witnesses, which she was entitled to do; but each party was left to pay their own costs of the issue (*g*).

(*d*) *Scaife v. Scaife*, 4 Russ. 309. & R. 393.

(*e*) *Tatham v. Wright*, 2 Russ. & (*f*) *White v. Wilson*, 13 Ves. 91.

M. 31; see *Newton v. Lucas*, 1 My. (*g*) *Smith and Another v. Dear-*

Where an heir-at-law in disputing a will had raised a contest upon circumstances which were entirely *dehors* the will, and had failed in that contest, and had moreover altogether failed in proving a material fact, upon which great stress had been laid in the Court below, and but for which his Lordship probably would not have thought it necessary to send the case to law at all; he was of opinion that so much of the costs of the appeal as were occasioned by the trial of the action, should be borne by the heir-at-law (*h*).

5. *Of wills made during lucid intervals.*

All acts done during a *lucid interval* are to be considered as those of a person perfectly capable of contracting, managing, and disposing of his affairs at that period, and this rule applies to *wills* as well as contracts. This has more frequently occurred upon wills. A number of questions has been raised upon the execution of a will during a lucid interval, and that being proved, the will has been held valid and effectual to all intents and purposes, for the conveyance of real and personal estate, as if the testator had never been deranged (*i*).

Where general lunacy has been established, the parties alleging a lucid interval are under the necessity of shewing that there was not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficient to enable the alleged lunatic to judge of the act he has performed (*k*). Lord *Thurlow* is reported to have said, that, “by a perfect *interval*, he did not mean a cooler moment, an abatement of pain or violence, or of a higher state of torture, a mind relieved from excessive pressure—but an interval in which the mind having thrown off the disease, had recovered its general habit” (*l*).

Every person is presumed to be sane, until it is shewn that

mer and Others, 3 Younge & Jerv. 278; see *Devie v. Lord Brownlow*, 2 Dick. 796.

(*h*) *Newton v. Lucas*, 1 My. & Cr. 391.

(*i*) 9 Ves. 610.

(*k*) 9 Ves. 611; see 3 Add. 46; 11 Ves. 11.

(*l*) 3 Br. C. C. 444; see *ante*, pp. 57, 58.

he has become insane; the presumption then changes; it is presumed that he continues of unsound mind, and the party setting up any instrument after insanity has manifested itself, has the burden of proof cast upon him; he must shew recovery, and he must shew, not merely that the party whose act is the subject of inquiry was restored to a state of calmness, and to the ability of holding rational conversation on some topics, but that his mind, having shaken off the disease, was again become perfect, was sound upon all subjects, and that no delusion remained (*m*).

If a will made by a lunatic is rationally drawn up, and the nature of the disorder was such as to afford any reasonable ground to suppose that a lucid interval may have prevailed; the act itself furnishes a very strong presumption of that sound and disposing mind which is necessary to its validity (*n*).

What fell from the late Sir *William Wynne* in his judgment in the case of *Cartwright v. Cartwright* and others (*o*), before the Delegates, on an appeal from the Prerogative Court of the Archbishop of Canterbury, expounds the law upon this point with great clearness and precision. There, the testatrix wrote her will without any collateral circumstances to indicate the fact of a lucid interval, and with her own hands, loosened from their ligatures for the purpose; she was alone while she performed the act, though observed through an aperture by persons in an adjoining room, who deposed, that, while engaged in doing it, she frequently left off writing, threw the torn pieces of paper into the fire, and walked about the room in a wild and disordered manner. But the paper itself had no mark of irritation; whatever outward appearance of disorder there might have been, it had no effect upon the writing itself, which was a perfectly steady and correct performance, entirely consistent with her attachments, impressions, and habits, when in a sane condition, and written without a single mistake or blot. The will was planned and completed by the testatrix

(*m*) *Groom v. Thomas*, 2 Hagg. Eccl. R. 434.

1 Vol. 125; 9 Ves. 610.

(*n*) See Swinb. on Wills, by Pow.

(*o*) 1 Phill. Eccl. R. 90—121; and see *White v. Driver*, Id. 84.

without any assistance, and afterwards recognised by her. Upon this state of the case, Sir *William Wynne* decided for the validity of the will, grounding his judgment on the following principles:—

The rule of the law of England on this subject is the same as that of the civil law (*p*). “If it can be established that the party afflicted habitually by a malady of the mind has intermissions, and if there was an intermission of the disorder at the time of the act, that being proved is sufficient, and the general habitual insanity will not affect it; but the effect of it is this, it inverts the order of proof and of presumption; for, until proof of habitual insanity is made, the presumption is, that the agent, like all human creatures, was rational: but where an habitual insanity in the mind of the person who does the act is established, there the party who would take advantage of the fact of an interval of reason must prove it—that is the law; so that in all these cases the question is, whether, admitting habitual insanity, there was a lucid interval or not to do the act. The strongest and best proof that can arise as to a lucid interval is that which arises from the act itself, which is the thing to be first examined, and if it can be proved and established that it is a rational act rationally done, that is sufficient.” The rule upon this subject is thus laid down by *Swinburne* (*q*), ‘If a lunatic person, or one that is beside himself at some times, but not continually, make his testament, and it is not known whether the same were made while he was of sound mind and memory or no, then, in case the testament be so conceived as thereby no argument of phrensy or folly can be gathered, it is to be presumed that the same was made during the time of his calm and clear intermissions, and so the testament shall be adjudged good; yea, although it cannot be proved that the testator used to have any clear and quiet intermissions at all; yet nevertheless, if the testament be wisely and orderly framed, the same ought to be accepted for a lawful testament.’ “Unquestionably (continued

(*p*) *Furiosi autem, si per id tempus fecerint testamentum quo furor eorum intermissus est, jure testati esse videntur; certe eo, quod ante furorem*

fecerint, testamento valente. Inst. lib. 2, tit. 12, s. 1.

(*q*) *Swinb. on Wills, part 2, s. 3.*

Sir *W. Wynne*,) there must be complete and absolute proof that the party who had so framed it did it without any assistance. If the fact be that he has done as rational an act as can be, without any assistance from another person, nothing more is necessary to be proved. There does not appear to be any authority or law to prove what the length of the lucid interval is to be, whether an hour, a day, or a month; all that is required is, that it should be of sufficient length to do the rational act intended; if it is established that the act done is perfectly proper, and that the party who is alleged to have done it was free from the disorder at the time, that is completely sufficient."

It is not every act rationally done, which, under all circumstances, is sufficient to establish a lucid interval. Nor will propriety of expression alone suffice to establish a will, if other circumstances in proof, added to the nature of the bequests, should raise a presumption that it originated in insanity. Thus, in the case of *Clarke v. Lear* and *Scarwell (r)*, the testator, a middle aged man, being a lunatic, escaped from his keeper, and at a watering place fell in love with a young lady to whom he afterwards sent in very polite terms a present of a lottery ticket, and making a will, rational on the face of it, left her a legacy of 1000*l*. But, though it was argued that all this had the appearance of reason, the will was set aside as bottomed in insanity.

There are many circumstances which, though not of themselves enough to establish actual insanity, where it had not before become decided, are still strong *indicia* of its continuance—such as great irritability, violent passions, occasionally deep depression, eccentric habits, suspiciousness, inconsistency, changeableness, and the like. If actual insanity has never existed, many, or most of these circumstances may occur, and yet not establish positive derangement: but, where actual derangement has previously existed, lighter things become confirmations (*s*).

It has been stated, that if in a testament there is a mixture of wisdom and folly, it is to be presumed that the same was

(*r*) Cited 1 Phill. Eccl. R. 119; see 2 Curt. 446.

(*s*) *Groom v. Thomas*, 2 Hagg. Eccl. R. 443.

made during the testator's phrensy, insomuch, that if there is but one word sounding to folly, it is presumed that the testator was not of sound mind and memory when he made the same (*t*). But this doctrine applies only to the case of a person who is sometimes sane and sometimes insane, and of whose state when he wrote the will there is no direct proof. And, therefore, the Ecclesiastical Court will not at once reject an allegation propounding a will which *sounds to folly*, when facts are pleaded, shewing that the testator, up to his death, conducted himself in the ordinary concerns of life as a sane man (*u*). It is necessary to observe great caution in examining the proof of a lucid interval, but the law must not be defeated by any overstrained demands of such proof (*v*).

It may be difficult, and perhaps would be dangerous, to attempt to define what is the essence of insanity. Delusion has been generally laid down (*w*) as essential; that is, the fancying things to exist which can have no existence, and are impossible according to the nature of things as that trees will walk, or statues nod, and which fancy no proof or reasoning will remove. An opinion against rational probability is not necessarily an insane opinion; it is not drawing right conclusions from manifestly false premises, but erroneous inferences from premises which may be true (*x*). Others may have said, that insanity may exist though no delusion prevail; whether this means that it may exist where no delusion ever has prevailed, or only where it cannot be called forth upon the particular occasion, is not so clear. Sir *J. Nicholl* said, "that no case had ever come under his notice where insanity had been held to be established without any delusion ever having prevailed, nor was he able exactly to understand what is meant by '*a lucid interval*,' if it did not take place when no symptom of delusion can be called forth at the time. How, but by the manifestation of the delusion, is the insanity proved to exist at any one time? The disorder may not be permanently and altogether eradicated—it may only intermit

(*t*) Swinb. on Wills, part 2, s. 3,
ad finem.

(*u*) *Arbery v. Ashe*, 1 Hagg. Eccl.
R. 214.

(*v*) *White v. Driver*, 1 Phil. Eccl.
R. 88.

(*w*) See *ante*, pp. 42, 43.

(*x*) 3 Hagg. Eccl. Rep. 545, 598.

—it may be liable to return ; but, if the mind is apparently rational upon all subjects, and no symptom of delusion can be called forth on any subject, the disorder is for that time absent ; there is then an interval, if there be any such thing as a lucid interval. It may often be difficult to prove a lucid interval, because it is difficult to ascertain the total absence of all delusion” (*y*).

In a case where the deceased was admitted to have been insane before the execution of two asserted wills, and where there was evidence of delusion and other *indicia* of derangement existing shortly before, as well as subsequent to the acts, proof of calmness, and of his doing formal matters of business, under the sanction of his family, were held not sufficient to rebut the presumption against such wills (*z*).

In a case where delirium, as contradistinguished from fixed mental derangement or permanent proper insanity, was set up in opposition to a will, it was observed by Sir *John Nicholl*, “ that the two cases, however similar in some respects, are still distinguished from each other in several particulars ; and in no one particular more than in the greater comparative facility of proving a *lucid interval* in the one than in the other case. For, in cases of permanent proper insanity, the proof of a lucid interval is matter of extreme difficulty, because the patient so affected is, not unfrequently, rational to all outward appearance, without any real abatement of his malady ; so that, in truth and substance, he is quite as insane in his apparently rational, as he is in his visible raving fits. But the apparently rational intervals of persons merely delirious, for the most part are really such. Delirium is a fluctuating state of mind, created by temporary excitement ; in the absence of which, to be ascertained by the appearance of the patient, the patient is most commonly really sane. Hence, as also indeed from their greater presumed frequency, in most instances in cases of delirium, the probabilities, *a priori*, in favour of a lucid interval, are infinitely stronger in a case of delirium than in one of permanent proper insanity ; and the difficulty of proving a lucid

(*y*) 3 Hagg. Eccl. Rep. 598, 599.

(*z*) *Groom v. Thomas*, 2 Hagg. Eccl. Rep. 433.

interval is less, in the same exact proportion, in the former, than it is in the latter case, and has always been so held by the Ecclesiastical Court”(a). The antecedent declaration of a party with respect to his intention in making a disposition by will, have been allowed weight in favour of the presumption of a lucid interval. Thus, in a case (b) where a person, having a large family, made his will while resident in a receptacle for deranged persons, and provided for the respective branches of his family, for whom he had at several periods made different provisions. Among other respectable persons with whom he was acquainted was a Bank Director, to whom he had, previously to the commencement of his calamity, stated the provisions he had made, and what he intended to do further for the different branches of his family. The question was, whether a will made in that house was made during a lucid interval. He was at that time as competent to converse upon the subject of testamentary dispositions as he was before; he had the same objects and purposes: and, upon the state of his mind compared with his antecedent declarations, his will was established.

It seems that a will of personalty only, made before the 1st January, 1838, conformable to a long entertained intention, prepared two months before, and the execution whereof was merely delayed for want of witnesses, would be valid as an unexecuted paper, even though the execution finally took place during supervening insanity (c).

But since the stat. 7 Wm. 4, and 1 Vict. c. 26, requires the execution of wills, and alterations of wills made on or after the 1st January, 1838, to be attended with certain formalities, it is obvious that no will can be made or altered unless the testator has complied with the necessary formalities and was of sound mind at the time.

(a) *Brogden v. Brown*, 2 Add. 444, 445; see 1 Hagg. Eccl. Rep. 158, 159.

(b) *Coglan's case*, 19 Ves. 508; 1 Dow, P. C. 178: see also 1 Phill. Eccl. R. 120; 3 Br. C. C. 444;

3 Hagg. Eccl. Rep. 547.

(c) *Fulleck v. Allinson*, 3 Hagg. Eccl. Rep. 527; see *Moore v. Hacket*, 2 Lee Eccl. C. 147; *Gamet v. Sellars*, 1 Lee Eccl. C. 186; *Hoby v. Hoby*, 1 Hagg. 146.

It would be inconsistent with the nature and object of a commission of lunacy, to allow the party subject to it to alien his estate by deed, even during a lucid interval, but, as a will does not take effect until his death, the same objection will not apply to a disposition by will, made during a lucid interval, by a person subject to such a commission (*d*). But, in a case where there is not actual recovery, and the unfortunate individual has not been restored to the management of himself and his concerns, the proof of a lucid interval is extremely difficult (*e*).

The sanity of a testatrix was established, although a commission of lunacy had held her to be incapable from a period antecedent to the execution of the will (*f*).

Where the will of a lunatic had been admitted to probate, the Court, upon the petition of the executrix, ordered a fund in Court, belonging to the lunatic's estate, to be transferred to trustees, to be approved by the Commissioner in lunacy, and to be held by them upon the trusts of the will, although such will was made after the time from which the testator had been found by inquisition to be of unsound mind (*g*).

A party deceased having made a will, who was afterwards found by an inquisition in lunacy, to be of unsound mind from a date anterior to that of the will—the Court refused, upon affidavit, and consent of parties on motion to decree such party to have died intestate, there being nothing on the face of the will sounding to folly (*h*).

A party having died insane, leaving a will, which, upon the face of it, exhibited marks of insanity—the Court granted administration of the effects of the deceased as dead intestate, but directed the will to be deposited in the registry (*i*).

(*d*) See 17 Edw. 2, c. 10; *ante*, pp. 11. 347; Dyer, 26 a; 4 Rep. 127 a; see *Clements v. Rhodes* and *Others*, 3 Add. 37; *ante*, pp. 74—76.

(*e*) 2 Hagg. Eccl. Rep. 449.

(*f*) *Rodd v. Lewis*, 2 Lee Eccl. C. 176. An inquisition of lunacy before marriage is conclusive against

it, by stat. 15 Geo. 2, c. 30, though certainly not conclusive against a will; 2 Phill. Eccl. R. 90.

(*g*) *In re Garden*, Law J. 1844, Ch. 439.

(*h*) *In bonis Watts*, 1 Curt. 594.

(*i*) *In bonis Bourget*, 1 Curt. 591.

6. *Of wills impeached on the ground of the partial insanity of testators.*

Proof of the existence of *partial insanity* will invalidate contracts generally, and will be sufficient to defeat a will, the direct offspring of that partial insanity, both in the Courts of Common Law, and in the Ecclesiastical Courts; although the testator at the time of making it was sane in other respects, upon ordinary subjects.

An allegation by an only child, pleading partial insanity for setting aside a will, was admitted; but the whole history of the insanity of the testator, as respected the particular person or fact, was required to be minutely detailed from an early period (*k*).

The following decisions have occurred upon cases of this description. The first is that of *Mr. Greenwood*, who was bred to the Bar, and acted as chairman at the Quarter Sessions, but, becoming diseased, and receiving in a fever a draught from the hands of his brother, the delirium taking its ground then connected itself with that idea; and he considered his brother as having given him a potion with a view to destroy him. He recovered in all other respects; but that morbid image never departed, and that idea appeared connected with the will, by which he disinherited his brother. Nevertheless it was considered so necessary to have some precise rule, that, though a verdict had been obtained in the Court of Common Pleas against the will, the Judge strongly advised the jury, on a second trial, to find the other way; and they did accordingly find in favour of the will. Further proceedings took place afterwards, and concluded in a compromise (*l*).

The principal object of inquiry in the case of *Dew v. Clark* and *Clark* (*m*) was the cause and grounds of the testator's impressions and feelings respecting his daughter, as to whom it

(*k*) *Dew v. Clark* and *Clark*, 1 Add. 274.

(*l*) 13 Ves. 89; 3 Bro. C. C. 444; see 4 Y. & Coll. 389, and Lord *Kenyon's* charge to the jury in this

case, *Greenwood v. Greenwood*, 3 Curt. App.

(*m*) See the report of this case by Haggard, and 3 Add. 79—209.

was said he laboured under delusions ; and the consideration whether those impressions were founded on realities, accounting for his acts of severity, or were the offspring of a disordered mind ; and whether his conduct towards his daughter was accompanied by any other circumstances tending to shew insanity. The question arose in considering the validity of the will of Ely Stott, who died on the 18th November, 1821, at the age of seventy-two years, leaving a widow and an only daughter by a former wife. He had several nephews and nieces, but of course none of them were entitled in distribution. His property amounted to nearly 40,000*l.* In the month of February, 1821, the wife applied for a commission of lunacy against the deceased, which was granted and executed, and the deceased was found of unsound mind from the preceding 1st of January. The will in question was dated in the month of May 1818, three years before the finding under the inquisition. The substance of the will is as follows : To his wife, the testator gave his furniture, books, &c. ; to his nephew Thomas Clark 100*l.* ; to his nephew Valentine Clark 150*l.* ; to Daniel Goff (the amount was left in bank) ; 1333*l.* 6*s.* 8*d.* 3 *per cents.* were given to trustees, to pay the dividends to Lydia Sley, spinster, for her sole use ; after her death, these 3 *per cents.* were to fall into the residue. A similar sum was given in trust for the children of Mrs. Jones, and this sum was ultimately to fall into the residue. He gave 2833*l.* 6*s.* 8*d.* 3 *per cents.* to trustees to pay the dividends *to his daughter for her separate use* ; he likewise gave them all the money due to him, as representative of his first wife under the will of The Honorable Charlotte Clive, in trust to invest it and pay the dividends *to his daughter for her separate use.* After the daughter's death both sums were to fall into the residue. To any servant who had lived with him for five years at the time of his death, he gave an annuity of 40*l.* He bequeathed to Messrs. Reid, Fletcher, and Rawlins, his executors, a legacy of 50*l.* each ; and the whole residue of his estates, real and personal, to his executors, in trust to pay his wife an annuity of 400*l.* during her life or widowhood. If he left any children by his then wife, the residue was to be divided among them ; if there were no such

children, (as the event happened), then the residue was to go to his *nephews Thomas and Valentine Clark*. He appointed his wife, Reid, Fletcher, and Rawlins, executors. The dispositions of the will were undoubtedly very much to the prejudice of the daughter, who, out of the testator's large property, had merely an annuity for life of about 100%. But the will was fully and formally drawn up, was regularly executed, and attested by three respectable witnesses. Soon after the death of Mr. Stott, all the executors having renounced probate, administration with the will annexed was taken out by the residuary legatees, Thomas and Valentine Clark; and soon afterwards, in the month of April, 1822, the administration was called in by the daughter and only child. The will was propounded by the residuary legatees, and opposed by Mrs. Dew, the daughter; the first allegation given for the execution pleaded merely the *factum* of the will, and the death, character, and handwriting of one of the attesting witnesses; in support of this allegation, the two surviving witnesses were examined, and the *factum* was proved. In particular, the solicitor, who prepared the will, proved instructions from the deceased himself, several interviews with him, the different stages of the preparation, and finally the regular execution of the will. Both the other witnesses spoke to their conviction and belief that the deceased was of perfectly sound mind when he made his will.

The ground on which the will was opposed, was not a denial of the instructions and execution, nor a suggestion of any fraud or circumvention, nor of any extrinsic influence; and it was not alleged, that the will did not originate with the testator, nor that it was not prepared and completed by his direction, nor that the attesting witnesses had misrepresented the facts, nor that they had not given an honest opinion of the state of the deceased; but the ground was, that, though the will was the mind of the deceased, yet it was not a sound, but an unsound mind—unsound in the legal acceptation of the epithet—"deranged and insane." The general outline of the plea on behalf of the daughter was, that the deceased shewed strong marks of derangement towards his first wife, and at the

birth of this daughter; that, towards the daughter, he shewed great antipathy and hatred; that, in respect of her, he laboured under great delusion of mind; declared that she was invested by nature with singular depravity; was an abandoned profligate, vile, and irreclaimable; that he treated her with the greatest cruelty and violence, notwithstanding she was dutiful and virtuous; that, in various other respects, he exhibited marks of insanity: the admission of this plea, which was very long and detailed, was opposed; and the Court was of opinion, that it disclosed a case difficult of proof; but that, if proved, it would be available. In answer, a long plea was also given in support of the will; pleading the general sanity of the deceased in the whole of his conduct; pleading his character, temper, and religious principles, as accounting for harshness towards his daughter; and alleging such misconduct in the daughter as afforded rational grounds for severity during her education, and for displeasure afterwards; such as shewed that he acted not under derangement, but on facts which he considered as justifying his resentment.

Sir *John Nicholl* observed (*n*)—"In this case, there is evidence to shew that the deceased, in the ordinary transactions of life, conducted himself and his affairs rationally; was a sensible, clever man; amassed a considerable fortune by his profession; took great care of his property; and that several of his friends and acquaintance, some of them medical persons, never considered, or even suspected, that he was deranged in his mind: all this is fully established, and strengthened the presumption of sanity, and requires that the proof of derangement should be very forcible and stringent; but, it is not conclusive, nor is it even conflicting evidence. All this may be true, and yet delusion on particular subjects, and shewing itself on particular occasions, might exist." And, after going through the principal evidence, he said, "In this case (*o*), the main delusions, certainly, are those respecting his daughter and respecting himself; so that, though his daughter, from

(*n*) See Report of *Dew v. Clark and Clark*, by Haggard, p. 18.

(*o*) *Id.* pp. 98, 99.

her earliest infancy to the end of her history in this case, is proved to be amiable in disposition, of superior natural talents, engaging in her manners, diligent, industrious, submissive, and obedient, patient under affliction, dutiful and affectionate, modest and virtuous, moral and religious, yet, in the deluded mind of the deceased, she is the most extraordinary instance of depravity, of vileness, of vice, of crime, of profligacy, of hypocrisy, of artifice, of disobedience, of revolt and rebellion against paternal authority, and is quite irreclaimable—while, in regard to himself, he is a pattern of fatherly tenderness and affection, though tying his daughter to a bed-post, and flogging her with the most unmerciful severity, and aggravating her suffering by other acts of cruelty, and compelling her to perform the most menial drudgery, and of the severest sort, to which even a servant would not submit. All these things are represented by himself as proofs of his great tenderness and regard. These impressions accompanied him through life, and are recorded in this will. To remove these delusions, no reasoning, no argument, no interposition of friends, no pastoral authority, is of any avail; even the sanctions of religion cannot convince him that his ideas are erroneous, nor induce him to alter his conduct; he held himself perfect and faultless—‘pure as the Deity.’ What might be the condition of the deceased as applied to other transactions, civil or criminal, it is not my duty to consider.” The learned Judge in conclusion said, it was his duty conscientiously to decide this case upon his own moral conviction, founded on the evidence respecting the will, carefully guarding himself from being misled by feelings of compassion: and it was his full conviction, that the deceased when he made this will was not a person of sound mind; or, in Lord Coke’s language was—“*non compos mentis*.” He therefore pronounced against the validity of the will (*p*). The last decision was confirmed by the Delegates, and a petition for a commission of review was afterwards presented by the residuary legatees; but the Lord Chancellor gave judgment, that, under the circumstances of this case, he did

(*p*) Ibid.; and see Sir John Nicholl’s judgment in *S. C.*, 3 Add. pp. 79—209.

not think fit to recommend his Majesty to grant such commission (q).

The case of *Dew v. Clark*, is not considered to go to the full extent, that a will under whatever circumstances, must necessarily be invalid, because the deceased entertained notions which might have no foundation, but the Court must look to see whether the delusion be an insane delusion, and continued to be an insane delusion, and was so indelibly fixed in the mind of the deceased, that no reasoning, no demonstration, no remonstrance of friends could convince him that it was devoid of foundation (r).

Where a testator is not shewn to be subject to frenzy or fatuity, it is necessary for the purpose of establishing his insanity, to shew, that upon some particular subject he was under a delusion as to facts within his own observation, and that he actually believed in the existence of facts, which a rational man, from the use of his senses, under the same circumstances, would have known not to exist. And a gross exaggeration of slight circumstances may amount to insane delusion, as falling within the above proposition of delusion as to facts. But a testator is not to be considered insane from entertaining any opinions, however unfounded or absurd. As where he speaks of his kept mistress, who had died before him, as having been a person of "deep religious feeling." Nor from a pretended belief in non-existing facts, assumed for the purpose of deception: As where the testator had in October, 1832, acknowledged a child by his second wife to be his child; and yet in a codicil to his will, dated in the same year, disowned any daughter born of his second wife; the Court, thinking that the testator never really believed that such child was illegitimate, but that he only threw doubts on her legitimacy for sinister purposes.

The appellant, though unsuccessful, was allowed, under the circumstances, his costs of the suit in the Court below, though not the costs of the appeal (s).

(q) *Dew v. Clark* and Others, Reg. Lib. 1827, A. fol. 2673; 5 Russ. 163; ante, pp. 45, 46.

(r) *Per Jenner, Chambers v. Queen's Proctor*, 2 Curt. 449; see *Fraser v.*

Fraser's Trustees, 13 Shaw, D. B. & M. 703.

(s) *Ditchburn v. Fearn*, 6 Jurist, 201.

It was held, in another case, that a testamentary paper cannot be set aside on the ground of *monomania*, unless there be the most decisive evidence, that, at the time of the *factum* of the paper, the belief in the testator's mind amounted to insane delusion. The testator had been a Fellow of Queen's College, Oxford, and for the last twenty years of his life rector of a living belonging to that college: he was always eccentric in his habits, resided in the rectory-house, and was latterly very retired. His sister had two daughters, one of whom married Harrison, a farmer, who lived in the testator's parish, collected his tithes, and was appointed his churchwarden. In consequence of the testator and his two servants having been all taken ill together, with a complaint in the bowels and vomiting, he believed that an attempt had been made to poison him. It appeared, that he had declared that the well belonging to his house had been poisoned by an infusion of poisonous matter, and that he subsequently thought that the eggs, butter, and milk sent by Harrison, were poisoned; which belief continued to his death. The testator, advised by his solicitors and a medical man, who thought at the time that he had rational grounds for his suspicions, caused several investigations to be made, for the purpose of ascertaining whether any attempt to poison him had been made; and the gentlemen who conducted them were satisfied that there had been none. The papers propounded as the will and codicil were prepared and executed subsequently to the time when the testator was impressed with the belief of the poison, and bequeathed nearly the whole of his large property to the Provost and Fellows of Queen's College, Oxford, for charitable purposes, for the benefit of the poor of the parish in which he resided; but it appeared that they carried into effect an intention which had been expressed long before he had the notion about poison, and which had been delayed merely for the purpose of getting witnesses. The will was all in the testator's handwriting, was remarkably well written, without alteration or erasure, and bore no appearance of excitement or hurry, was attested by two clergymen, one his curate, the other the minister of an adjoining parish, who both in the most unhesitating manner deposed to their full belief

that the testator was of perfect sound mind, notwithstanding, at the time of their examination, they were aware of his opinions respecting poisoning; and this testimony was corroborated by that of the solicitors and medical man of the testator. The testamentary papers were opposed by the next of kin, on the ground that they were prepared and executed when the testator was impressed with the belief of poisoning, and while he was of unsound mind and under mental delusion. Sir *John Nicholl* said, "that, at all events, it was a case of *monomania*: for, upon every other subject, from the time in question to his death, the deceased acted as a person of sound mind, as much as he had ever been; he managed his house, his property, and his farm, granted leases, received tithes, kept accounts, recognised his will, held rational conversation, and did church duty. A *monomania*, to affect such an instrument, under such circumstances, should be clear in point of existence, and decided in character, beyond all doubt. That the deceased thought and believed that an attempt had been made to poison him, seemed to be a fact established; but was it proved that his opinion in that respect was a mere morbid insane delusion, rendering him intestable? The question was not, whether the attempt to poison was really made, but whether he had grounds for suspecting it? or whether, as pleaded, 'the deceased had no rational grounds whatever for his belief?'" The Court pronounced in favour of the will and two other papers, but allowed all the costs out of the estate (*t*).

When the mind of a dying person is reduced by the stress of his malady, or by general exhaustion, to such a state of mental depression and debility as to be incapable of a determinate testamentary act, a paper signed by him under such circumstances, as a codicil to his will, will be rejected by the Ecclesiastical Court, especially if such instrument contains internal evidence of intellectual weakness, and disturbs the settlement of the testator's affairs by a former well-considered will made by him when in the entire possession of his mental powers (*u*).

(*t*) *Fulleck v. Allinson*, 3 Hagg. Brouncker, 2 Phill. Eccl. R. 57; see Eccl. Rep. 527—547. *Harwood v. Baker*, 3 Moore, P. C.

(*u*) *Brouncker and Cooke v.* 282.

Mental incapacity may invalidate only part of a will; as in a case where a testator wrote the first part of what was propounded as his will with his own hand, but the concluding part was written by the executor, who was principally benefited, and who was the active agent in bringing the witness to it to the house of the deceased. According to the evidence, the deceased was so worn out that he could not complete his will, but there was no proof of any actual incapacity which could be set against his writing his intentions sensibly and intelligibly to a certain extent. It appeared, however, that, after this effort, his capacity was not so alive as to prevent him from executing an instrument of the contents of which he was not aware; and it was not in evidence that he gave any instructions for the part of the paper which was written for him, or that it was read over to him after it was written. The Court pronounced against the part of the will as to the appointment of the executor and residuary legatee, but in favour of the part written by the testator himself (*v*).

Where a will is partially defaced by a testator whilst of unsound mind, it is to be pronounced for as it existed in its integral state, if that can be ascertained (*w*). If a testator of impeached sanity do some act with relation to his will, of whose state of mind at the time of doing the act, there is no evidence *aliunde*, his rationality at such time, or the contrary, is to be inferred from that of the act itself (*x*). In a case where it appeared that the testator being moved with a sudden impulse of passion against one of the devisees under his will, conceived the intention of cancelling it, and of accomplishing that object by tearing, and, having torn it twice through, but, before he had completed his purpose, his arms were arrested by a bystander, and his anger mitigated by the submission of the party who had provoked him, and he proceeded no further: it was held a question for the jury to determine whether the act of cancellation was complete (*y*).

(*v*) *Billingshurst v. Vickers*, 1 Phill. Eccl. R. 187—198. And see *Wood v. Wood*, Id. 357.

(*w*) *Scruby v. Fordham*, 1 Add. 74. In *bonis Shaw*, 1 Curt. 905.

(*x*) *Scruby v. Fordham* 1 Add. 74.

(*y*) *Doe d. Perkes v. Perkes*, 3 B. & A. 489; see *Doe d. Reed v. Harris*, 8 Ad. & E. 1; 6 Ad. & E. 209; 1 Nev. & P. 405.

In another case where it appeared from affidavits that the testator altered his will while in a state of unsound mind, and there was a proxy of consent from all parties affected by such alterations, probate of the will in its original form was decreed (z).

Besides insanity, properly so called, a species of insanity, the mere effect of drunkenness and excitement from spirituous and other intoxicating liquors, has sometimes been set up for the purpose of defeating an alleged will. It has, however, been very justly observed (a), that, whatever resemblance there may be in the conduct and actions of a man under such excitement, and those of a person properly insane “their apparent similarity are subject to very different considerations.” Where actual insanity has once shewn itself, either perfect recovery, or at least a lucid interval at the time of making the will, must be clearly proved, to entitle an alleged testamentary paper to be pronounced for as a valid will. Either of these, however, the last especially, is highly difficult of proof, for this reason—that insanity will often exist, though *latent*; so that a person may in effect be completely mad or insane on some subjects, and in some parts of his conduct apparently rational; but the effects of drunkenness *only subsist*, whilst the cause, the excitement, visibly lasts: there can scarcely be such a thing as latent ebriety; so that a case of incapacity from mere drunkenness, and yet the man being capable to all outward appearance, can hardly arise. Consequently, in cases of this description, all which is required to be shewn is, the absence of such excitement at the time of the act done, as would vitiate it: for, under a slight degree of excitement from liquor, the memory and understanding may be as correct as in the total absence of any exciting cause (b).

7. *Jurisdiction of the Ecclesiastical Courts in determining the validity of wills of personalty.*

The Ecclesiastical Courts have exclusive jurisdiction respect-

- (z) *In bonis Bicknell*, 3 Add. 209; see *ante*, pp. 363, 364.
 231. (b) *Ayrey v. Hill*, 2 Add. 209,
 (a) *Per Sir J. Nicholl*, 2 Add. 210.

ing wills and testaments of personalty, by custom (c). Thus, in *Partridge's case* (d), (overruling the Marquis of *Winchester's case* (e)) prohibition to probate of a will of lands and goods, on suggestion of *non compos*, was denied; the Court saying, that the statute (f) never intended to lessen the jurisdiction of the Ecclesiastical Court as to probate of wills; and to grant a prohibition might be inconvenient; for, without probate, the executor cannot sue for debts, which by this means might be lost, and the will remain unperformed. As for granting it *quoad* the land it would be vain; because it is no evidence, either *pro* or *con*, in any Court of law, but a proceeding *coram non judice*; yet it is good as to the personal estate. And in *Lady Chester's case* (g), *Hale* said, that the Ecclesiastical Courts may prove a will which contains goods and lands, though formerly a prohibition used to go *quoad* the lands (h). A will, as to so much as concerns lands, is to be tried in a Court of common law, and for so much as concerns personal estate in the Spiritual Court.

The granting probate is a judicial act, for the Ecclesiastical Court may hear and examine the parties on the different sides whether a will of chattels be or be not properly made; that being the only Court which can decide as to the validity of such a will. The Courts of common law and of equity have no jurisdiction over the subject (i). The probate is also conclusive until repealed; and no Court of common law can admit evidence to impeach it (k). Where a party has obtained probate, it is conclusive that he is executor (l).

If the sentence of an Ecclesiastical Court in a suit for ad-

(c) 6 Mod. 205; *Shutter v. Friend*, 1 Show. 158. The origin of this jurisdiction is stated in 1 Str. 667—672; Gilb. Eq. Rep. 203—209; *Henloe's case*, 9 Rep. 36—41; see 4 Inst. c. 74.

(d) 2 Salk. 552.

(e) 6 Rep. 23.

(f) 24 Hen. 8, c. 12.

(g) 1 Ventr. 207.

(h) See 1 Mod. 90; 2 Sid. 143; Hardr. 131; 2 Roll. 315; 1 Sid.

141.

(i) *Jones v. Frost*, 1 Madd. Rep. 1; S. C. Jac. Rep. 466; see 2 Atk. 324; *Allen v. Hill*, Gilb. Eq. 257; 13 Ves. 297.

(k) *Allen v. Dundas*, 3 T. R. 125; *Rex v. Vincent*, 1 Str. 481; *Rex v. Rhodes*, Id. 703; see Harg. Law Tr. 473; *Thomas v. Ketteriche*, 1 Ves. sen. 333.

(l) *Griffiths v. Hamilton*, 12 Ves. 298.

ministration, turns upon the question of which of the parties is next of kin to the intestate, such sentence is conclusive upon that question in a subsequent suit in the Court of Chancery, between the same parties for distribution (*m*).

B. and I. respectively claimed to be the sole next of kin of S., who died intestate; and by the sentence of the Ecclesiastical Court, I. was declared to be such next of kin, and letters of administration of the personal estate of S. were granted to him accordingly. A suit having afterwards been instituted by B. against I., claiming the residue of the personal estate of S., as her sole next of kin. It was held, upon the authority of *Bouchier v. Taylor* (*n*), that the Court of Chancery was precluded, by the sentence of the Ecclesiastical Court, from directing an issue to try whether B. was the sole next of kin of S. (*o*).

The seal of the Ecclesiastical Court authenticates the will; and therefore, if probate of a will of personalty under the seal of the ordinary be produced, evidence cannot be given in the temporal Courts that such will was forged, or that the testator was *non compos mentis*, or that another person was executor; but evidence may be offered that the seal of the Ecclesiastical Court was forged, or that there were *bona notabilia*, because that is not in contradiction to the real seal of the Court, but it admits the seal and avoids it (*p*). Since the Ecclesiastical Court has the probate of wills of personal estate, the temporal Courts cannot prohibit them in their inquiries, whether the testator was *non compos* or not, or whether the will be revoked or not (*q*). But if the validity of a will of personalty has been incidentally admitted by a party to a suit in equity, the Court of Chancery will restrain him from afterwards instituting proceedings in the Prerogative Court to impeach its validity (*r*). In a suit in the Ecclesiastical Court, by the administrator, for

(*m*) *Barrs v. Jackson*, 1 Phil. C. C. 582; 7 Jur. 54.

(*n*) 4 Br. P. C. 708, Toml. ed.; see *Duchess of Kingston's case*, 20 How. St. Tr. 355.

(*o*) *Barrs v. Jackson*, 1 Phil. C. C. 582; 9 Jur. 609.

(*p*) *Noell v. Wells*, 1 Lev. 235;

Vaugh. 207; Str. 671; 1 Show. 273; Sir T. Raym. 406; see *Rex v. Buttery*, 1 Russ. & R. C. C. 342.

(*q*) *Minshal v. Spicer*, Hardr. 131; *Hobart v. Barrow*, Id. 313; see Hob. 135.

(*r*) *Sheffield v. Duchess of Buckinghamshire*, 1 Atk. 628.

a legacy, if the defendant plead a release from the deceased legatee, and the administrator would avoid it by an allegation of lunacy or idiocy (*s*), that fact must be tried there; and no prohibition will lie, because that Court has jurisdiction of the original matter, according to the rule “*quod non est consonum rationi, quod cognitio accessorii in curia Christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere*” (*t*.)

A will of personal estate was proved in the Spiritual Court, but the executor of a former will brought his bill in equity, to discover by what means the latter will was obtained, and to have an account of the personal estate, and to stop the wasting of it, and whether the testator was not incapable, or imposed on. To this bill the defendant demurred, because it belongs to the Spiritual Court, only to determine the validity of wills of personal estate, and the former will was not proved in the Spiritual Court, as the will in the defendant's favour was; but the demurrer was overruled (*u*). In this case, an order was made for the defendant to bring into Court all papers and writings relating to the testator's estate, to pay into Court what had been received on account thereof, for the appointment of receiver, and for an injunction to restrain the defendant from receiving any more of the estate (*v*).

The heir-at-law is not estopped from impeaching a will, on the ground of the testator's insanity, although he has himself proved the will in the Ecclesiastical Court, and retained legacies (*w*). A person who proved a will in the Spiritual Court, by which he swore the testator was of sound memory, afterwards controverted the same will at law as to the real estate, upon which an issue was directed, *compos*, or *non compos*, and the testator was found *non compos* (*x*)—Lord *Hardwicke* said, it was much to be lamented that there should be such different

(*s*) Hob. 188; Godolph. Abr. Eccl. Law, p. 120.

(*t*) See 12 Rep. 65.

(*u*) *Andrews v. Powis*, Vin. Abr. tit. “Executors,” (B. 3), pl. 14; S. C. 2 Bro. P. C. 504, Toml. ed.; 1 Lee Eccl. C. 242.

(*v*) Reg. Lib. B. 1727, p. 151; see 2 Bro. P. C. 508, Toml. ed.

(*w*) Lord *Montagu's* case, cited 9 Mod. 90.

(*x*) Id. Vin. Abr. tit. “Executors,” (B. 6), pl. 9; 4 Br. P. C. 598, Toml. ed.

determinations in two concurrent jurisdictions; and though it was a great absurdity there was no way to make them uniform; but he knew only one case where this variation of judgment had happened, which was the case of *Maxwell* and Lord *Montagu*, where a testator was determined to be *compos mentis* in the Ecclesiastical Court, which sentence was affirmed in the Court of Delegates; and afterwards, on a trial at law, in relation to the real estate devised by the will, the testator was found *non compos*; and then an application was made to the House of Lords, by petition, to reverse the sentence in the Court of Delegates, in order to make the determinations uniform; but the House of Lords dismissed the petition, because the sentence of the Delegates was decisive, and no appeal lay from it to the House of Lords (*y*).

A motion was made on behalf of the plaintiff, as heir-at-law and next of kin of a testator whose will had been set aside for insanity, that one of the trustees and executors of the will might pay into the Bank what money he had received from the testator's assets, and that he might be restrained from getting in any more for the future. Lord *Hardwicke*, C., said, "that he had often thought it a very great absurdity, that a will which consisted both of real and personal estate, notwithstanding it had been set aside at law for the insanity of the testator, should still be litigated upon paper depositions only in the Ecclesiastical Court, because they had a jurisdiction on account of the personal estate disposed of by it. But, as the

(*y*) 3 Atk. 546.

In arguing the case of *Hurst v. Dodgson*, in December, 1829, Dr. *Lushington* mentioned, that a similar diversity of result had occurred in *Ayrey v. Hill*, (reported in 2 Add. 206), where a will, impeached on the ground of the testator's insanity, was established as a valid testamentary disposition by the judgment of Sir *J. Nicholl*, and was, on the same ground, determined to be inoperative as a devise of real estate, by the verdict of a jury. Dr.

Lushington added, that he recollected no case in which the converse had taken place, in which a will set aside by the Spiritual Court had been held effectual on a trial at law. 1 Russ. & Mylne, p. 106, note. See the Report of the Commissioners appointed to inquire into the practice of the Ecclesiastical Courts in England and Wales; ordered by the House of Commons to be printed, 27 Feb. 1832, pp. 34, 35.

law stood, it was not in the power of the Court of Chancery to interpose, so as to stop the proceedings in the Ecclesiastical Court" (z).

8. *Of the mode of proving and disputing wills in the Ecclesiastical Court.*

When a will is carried to the Ecclesiastical Court to be proved by the executor, and any disability attaches to the testator, it is customary for a proctor to enter a *caveat*, which prevents the probate passing in the common form. The opposing party is then required by the executor to shew what interest he claims in the estate; and, on so doing, and declaring his opposition to the will, the executor propounds the will, signifying, that it will be proved by witnesses. He files an allegation of the *factum* of the will, and of the testator's competence at the period of its execution; he then examines witnesses, which the opposing party may cross-examine, and assigns the cause for sentence, which passes; unless the opposing party files an allegation of facts, shewing incapacity, and examines witnesses, which may, in like manner, be cross-examined by the executor. Neither party can see the depositions before publication; but either of them may afterwards set down the cause for hearing; and the validity or invalidity of the testament will be declared by the Court, and probate granted or refused accordingly (a). If the will is only proved in the common form, it may, at any time within thirty years, be disputed (b) by any party interested requiring the executor to prove it *per testes*; but if the solemn form is pursued, and no adverse proceedings are instituted within the time limited for appeals, the will is liable to no future controversy (c).

Every legatee who puts in suit the validity of a will in the Ecclesiastical Court, must bring into, and leave in the registry

(z) *Montgomery v. Clark* and Others, 2 Atk. 378. 3rd ed.; 4 Burn's Eccl. Law, 251, 8th ed.; 3 Phill. Eccl. R. 1, 405.

(a) 1 Coll. on Lun. 631-2.

(c) Godolph. Orp. Leg. 62; Bac.

(b) Godolph. Orp. Leg. 62; see Abr. tit. "Executors," (E) 8; Williams on the Law of Executors, Part 1, B. 4, Chap. 3, s. 4, p. 250, Swinb. part 6, s. 14, pl. 4; *In bonis Dyer*, 1 Hagg. Eccl. R. 219.

of that Court the amount of his legacy if paid to abide the event of that suit (*c*).

The High Court of Delegates was established by statute 25 Hen. 8, c. 19, s. 4, (*d*), of which there were not any certain Judges of the Court regularly appointed; but, in every cause of appeal to that Court, there issued a special commission, under the Great Seal of Great Britain, directed to such persons as the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal, for the time being, should think fit to appoint to hear and determine the same. The persons usually appointed to determine causes in that Court were three puisne Judges, one from each Court of common law, and three or more civilians; but in special cases, a fuller commission was sometimes issued, consisting of spiritual and temporal Peers, Judges of the common law, and civilians, usually three of each description; by the tenor of the commission, one of the Judges of the Courts of common law was required to concur in every final judgment.

By the statute Hen. 8th, last cited, and by the statute 8 Eliz. c. 5, the appeal to this Court was final, as of right. In very special cases, the Crown granted a commission of review, but that rarely happened (*e*). There was no appeal to the House of Lords from a sentence in the Court of Delegates (*f*). The granting a commission of review was not matter of right, but of grace and favour (*g*), and it was seldom issued, unless there were very cogent reasons for believing that the sentence of the Court of Delegates was founded on error, in fact or in law, or unless the doctrines upon which it was supposed to be founded were so questionable or important, as to make it clearly fit that they should be considered in the most solemn manner (*h*). Even

(*c*) *Bell v. Armstrong*, 1 Addams, 374, and the cases there cited; *Braham v. Burchell*, 3 Addams, 256.

(*d*) This act was repealed by 1 & 2 Phil. & Mary, c. 8, but revived by 1 Eliz. c. 1, s. 10.

(*e*) See 4 Inst. 341.

(*f*) *Saul v. Wilson*, 2 Vern. 118;

and see 2 Swanst. 326.

(*g*) *Franklyn's case*, 2 P. Wms. 299; 2 Swanst. 328, note.

(*h*) *Eagleton and Coventry v. Kingston*, 8 Ves. 438; *Ex parte Fearon*, 5 Ves. 633; *Wyatt v. Ingram*, 3 Hagg. Eccl. Rep. 466.

the application for the commission of review was expensive and burdensome to the party in the possession of the sentence, and was sometimes resorted to, as in the case of appeals, in order to extort a compromise. It had not even the check of costs, for it had been held, that costs could not be given against the petitioner (*i*). A commission of review was not considered to have the effect of suspending the execution of the sentence, though in practice it was attended generally with that consequence; a circumstance which rendered the application grievous to the other party (*k*).

Judicial Committee of Privy Council substituted for Court of Delegates.—The act 25 Hen. 8, c. 19, so far as relates to the power of appeal and the appointment of Delegates, and the 8 Eliz. c. 5, are repealed (*l*). After the 1st day of Feb. 1833, every person who might theretofore, by virtue of either of the said acts 25 Hen. 8, c. 19, and 8 Eliz. c. 5, have appealed to the High Court of Chancery, may appeal to the Queen in Council, within such time, in such manner, and subject to such rules, orders and regulations, for the due and more convenient proceeding, as shall seem meet and necessary, and upon such security, if any, as shall from time to time be directed by order in Council; power is given to the Queen in Council to proceed to hear and determine every appeal to be made by that act, and to make all such judgments, orders, and decrees in the matter of such appeal as might theretofore have been made by the Court of Delegates; and every such judgment, order and decree so to be made, shall have such and the like force and effect in all respects whatsoever, as the same respectively would have had if made and pronounced by the High Court of Delegates. Every such judgment, order, and decree shall be final and definitive, and no commission shall thereafter be granted or authorized, to review any judgment or decree to be made by virtue of that act (*m*).

The Judicial Committee of the Privy Council has been since

(*i*) *Wyatt v. Ingram*, 3 Hagg. 20, 21.

Eccl. Rep. 471.

(*l*) 2 & 3 Wm. 4, c. 92, s. 1.

(*k*) See Report of the Ecclesiastical Commissioners, Feb. 1832, pp.

(*m*) *Ib.* s. 3.

established and provisions have been made for hearing and determining appeals from the Ecclesiastical Courts (*n*).

9. *Of the appointment of a receiver by the Court of Chancery pending a suit in the Ecclesiastical Court respecting the validity of a will.*

A caveat may be entered to prevent letters of administration, as well as to prevent probate of a disputed will; and when the person by whom the caveat is entered opposes the application of another party, their respective claims are brought before the Court by allegation supported by affidavit. When the right to administration is disputed, the party out of possession usually files a bill for the appointment of a receiver in the Court of Chancery, to secure the effects while the cause is pending in the Ecclesiastical Court (*o*).

The Court of Chancery has, in several instances, appointed a receiver of personal estate pending a suit in the Ecclesiastical Court either for obtaining or recalling probate or administration (*p*). Where no probate or administration has been granted it is of course to appoint a receiver, pending a *bond fide* litigation in the Ecclesiastical Court, to determine the right to probate or administration; unless a special case be made out for refusing such appointment (*q*). A bill was filed against the executors of a testator, by his sister and sole next of kin, and prayed the usual accounts of his personal estate, and for a receiver, and an injunction, pending a suit instituted by the plaintiff in the Ecclesiastical Court to recall probate: the testator, when on

(*n*) 3 & 4 Wm. 4, c. 41, amended by 7 & 8 Vict. c. 69; see Wms. on Executors, 432—445, 3d ed.; Shelford on the Law of Marriage and Divorce, 545—555; Macqueen on Appellate Jurisdiction, 687; 2 Knapp, App.

(*o*) *Phipps v. Steward*, 1 Atk. 285, 2 Br. P. C. 476; *Morgan v. Harris*, 2 Br. C. C. 121.

(*p*) *King v. King*, 6 Ves. 172; *Edmunds v. Bird*, 1 Ves. & Bea.

542; see 10 Sim. 328; *Atkinson v. Henshaw*, 2 Ves. & Bea. 85; *Ball v. Oliver*, Id. 96; *Gallivan v. Evans*, 1 Ball & Beatty, 191; see 3 Mer. 174; *Dew v. Clark and Others*, Reg. Lib. A. 1825, fol. 1844; *De Feuchères v. Dawes*, 5 Beav. 110; *Major v. Major*, 8 Jur. R. 797. Contra, *Richards v. Chave*, 12 Ves. 462.

(*q*) *Rendall v. Rendall*, 1 Hare, 152; Redesdale on Pl. 109, 110, 3rd ed., 135, 136, 4th ed.

his death-bed, and at the time when he was insensible and utterly incapable of disposing of his property, was made to affix his mark to the alleged will by one of the defendants, who caused a pen to be put between the testator's fingers, and guided his hand. The defendants obtained probate of this will, on the same day on which the testator was buried (*r*). The bill, besides these facts, stated strong circumstances, as evidence of incapacity in the testator, and of the charge that the probate had been obtained by fraud. A motion was made for a receiver, and an injunction against the defendant, before answer, on affidavits of the truth of the allegations contained in the bill. Sir *J. Leach*, V. C., said, "the ordinary application is for a receiver, where the legal administration has not been granted by the Ecclesiastical Court, and pending the contest for such administration. Here the legal administration has been granted by the Ecclesiastical Court, but there is a pending contest to recall the probate. Taking into consideration the evidence respecting the incapacity of this testator; the manner in which the will was obtained; the sort of surprise by which the probate was acquired; and the danger to the property: and upon the ground of the jurisdiction exercised in the Court of Chancery, to protect property pending a litigation in another Court, his Honour thought it a fit case for a receiver and an injunction" (*s*).

There must be a sufficient *lis pendens* in the Ecclesiastical Court to justify the appointment of a receiver, a suit merely to recall probate is not enough, for if so, it is evident that in order to obtain a receiver, it would only be necessary to institute a suit in that Court (*t*). But a receiver was appointed at the instance of an executor pending a suit to annul the probate, where the defendant who impeached the will and set up an intestacy, had by her own acts prevented the executor from

(*r*) See 1 Hagg. Eccl. Rep. 469, where it was observed by Sir *J. Nicholl*, that snapping a probate (as it is called) is always considered to create a suspicion of fraud.

(*s*) *Rutherford v. Douglas*, 1 Sim. & Stu. 111, n. (*d*).

(*t*) *Watkins v. Brent*, 1 My. & Cr. 97; *Rendall v. Rendall*, 1 Hare, 152.

getting in the assets (*u*). The Court will also appoint a receiver pending an appeal to the Privy Council from the decision of the Ecclesiastical Court upon the validity of a will, there being no power in the Privy Council to protect the property pending the appeal (*v*).

Although this jurisdiction is not in general exercised for the preservation of real estate pending a suit between the devisee and heir (*w*), yet under special circumstances it seems that a receiver may be appointed in such cases (*x*). Sir *William Grant* is reported to have said, that he could not see a good reason why the Court should not interfere to preserve real property, pending a suit concerning the validity of a devise. But, as a condition of such interference, the Court would certainly expect it to be shewn that the party applying was proceeding with all due expedition to bring the question to a decision (*y*). But a receiver will not be appointed at the instance of the party claiming as devisee under a will, the validity of which is to be determined by an issue, unless the claimant satisfies the Court that there is a reasonable probability of his succeeding on the issue, and that the property will be endangered by being left in the possession of the heir-at-law (*z*).

10. *Of relief in equity against a probate obtained by fraud.*

A Court of equity cannot relieve against the bequests of a will of personal property, objected to on account of fraud or insanity, whilst the probate continues unrepealed. A maid servant prevailed upon her master, a week before he died, when on his death-bed, to marry her at six o'clock in the evening, and make his will, bequeathing her all his property, and appointing her sole executrix. She had married another man a year

(*u*) *Marr v. Littlewood*, 2 My. & Cr. 454.

(*v*) *Day v. Croft*, cited 2 Beav. 293; *Wood v. Hitchings*, 2 Beav. 289, 298; *Blake v. Blake*, Ib. 293 n.

(*w*) *Smith v. Collyer*, 8 Ves. 89, 19 Ves. 155, 1 Ves. sen. 325; *Fin-*

gal v. Blake, 1 Moll. 158, 2 Moll. 50, 81.

(*x*) *Middleton v. Sherburne*, 4 Y. & Coll. 358; *Podmore v. Gunning*, 5 Sim. 485.

(*y*) *Jones v. Jones*, 3 Mer. 173.

(*z*) *Clark v. Dew*, 1 Russ. & Mylne, 103.

before, who was then living, and the testator knew of that marriage when it took place, but he had subsequently lost his understanding. The will having been proved in the Prerogative Court, and all the property being personal, Lord *Jefferies*, C., was of opinion, that so long as the probate remained in force, the matter could not be examined by the Court of Chancery; and his Lordship dismissed the bill, without permitting the parties to read evidence (a).

Although the Ecclesiastical Court has the exclusive power to decide what is or is not a will of personalty, yet it is clear, that it belongs to the Court of Chancery to give construction and effect to the will; and that there may be circumstances attaching personally on those who take by force of it, which will authorize the latter Court to ingraft an equity on the gift, and convert them into trustees for others (b).

An exception from the general jurisdiction of Courts of equity in questions of fraud, occurs in the case of wills, which, as to real estate, cannot be set aside on the ground of fraud without the verdict of a jury, and not all as to personal estate. It was decided by Lord *Macclesfield*, that a will might be set aside in equity for fraud; but the House of Lords on appeal overruled his decree (c), and thereby created the above exception to the jurisdiction of equity.

It has been lately decided that the Court of Chancery will not take any cognizance of wills of personal estate as to matters of fraud. A testator having by his will bequeathed a legacy to the plaintiff, and made S. E. his residuary legatee, executed several codicils, by which he gave to the plaintiff further legacies, and one-fourth share of his residuary estate. He afterwards executed another codicil, by which he revoked all former bequests to the plaintiff, giving him a small annuity in lieu thereof, and at the same time made a reduction in legacies which he had previously given to some of the plaintiff's rela-

(a) *Archer v. Moss*, 2 Vern. 8; S. C. 1 Eq. Cas. Abr. 405

Id. 284; *Segrave v. Kirwan*, 1 Beatty, 263; 1 Lee Eccl. C. 281.

(b) *Marriot v. Marriot*, 1 Str. 666 — 673; Gilb. Eq. R. 656; *Barnesly v. Powell*, 1 Ves. sen. 119;

(c) *Kerrich v. Bransby*, 7 Br. P. C. 437, Toml. ed.

tions. The will and all the codicils having, after litigation in the Ecclesiastical Court, been admitted to probate, the plaintiff filed his bill, alleging that the testator had been induced to execute the last codicil solely through certain false and fraudulent representations, which had been made against his (the plaintiff's) character at the instance of S. E., and that in the Ecclesiastical Court he had not been permitted to take any objections to that codicil, except such as went to the validity of the whole instrument, and praying therefore that the executors, or S. E., might be declared trustees for him to the amount of the bequests revoked by that codicil: It was held, upon demurrer, reversing the decision below, that the Court had no jurisdiction to entertain the bill (*d*).

A distinction was taken in one case between fraud upon the testator, and fraud after his death. Thus, where a bill sought relief against a paper-writing, purporting to be the will of the plaintiff's father, under which the defendant claimed, and an issue had been directed, and the jury found a verdict against the will, on the ground that it was a forgery—Lord *Hardwicke*, C., said, “there is a material difference between the Court of Chancery setting aside a will of personal estate on account of fraud or forgery in obtaining or making that will, and taking from the party the benefit of a will established in the Ecclesiastical Court by his fraud, not upon the testator, but upon the person disinherited thereby, and claiming after the testator's death against it. Fraud in obtaining a will infects the whole; but the case of a will, of which the probate was obtained by fraud on the next of kin, is of another consideration: upon which foundation this probate stands, being obtained from the plaintiff by fraud upon him, a weak man, (since found to be a lunatic), by the defendant's own acts subsequent to the death of the testator.” And, in analogy to the principle, that, though a Court of equity cannot set aside a judgment of a Court of common law, obtained by fraud and against conscience, but will decree the party to acknowledge satisfaction upon it, though

(*d*) *Allen v. Macpherson*, 1 Phill. C. C. 133; 5 Beav. 469; *Kerrich v. Bransby*, 7 Br. P. C. 437; *Middleton v. Sherburne*, 4 Y. & Coll. 358; see p. 379; *Ex parte Fearon*, 5 Ves. 647; *Gingell v. Horne*, 9 Sim. 539.

he has received nothing, the Court decreed the defendants to consent in the Ecclesiastical Court, in the following Term, to a revocation of the probate; that one defendant should have a fortnight after such revocation, to propound and exhibit another writing, purporting to be the testator's will of his personal estate, and to prosecute it with effect; and, if he did not, then both defendants were decreed to consent to the granting administration to the plaintiff. An account of the personal estate which was to be paid into the Bank for the benefit of the parties entitled, was also decreed (*e*).

A Court of equity may restrain a party from deriving any benefit from his appointment as executor, surreptitiously obtained from a person of incompetent understanding. As where an attorney by sinister means, prevailed on a testator of very weak mind to appoint him executor and trustee—the Court ordered that he should derive no benefit from the conveyances so obtained of the property, nor meddle in the execution of the will, without his co-executors (*f*). Where the plaintiff, by force and restraint on the testatrix, had induced her to make a will in favour of, and to appoint the plaintiff executrix, and such will concerning personal estate only, had been proved in the Spiritual Court—on a bill being brought by the executrix for the execution of a trust, the Court of Chancery would not allow the matter to be controverted there, but said, the plaintiff might make the best she could of her probate in the Spiritual Court, but should have no aid in equity; and, therefore, dismissed the bill with costs (*g*).

To a bill to perpetuate the testimony of witnesses to prove a will concerning personalty, a plea, that a cause was depending in the Prerogative Court concerning the validity of such will was allowed, but without costs (*h*). After a verdict has been found either for or against a will, on a trial directed by the Court of Chancery, a perpetual injunction is sometimes

(*e*) *Barnsly v. Powell*, 1 Ves. sen. 119, 284; Belt's Suppl. p. 152; see also *Meadows v. Duchess of Kingston*, Ambl. 762; *Plume v. Beale*, 1 P. Wms. 188.

(*f*) *Herbert v. Lounds*, 1 Chan. R. 22.

(*g*) *Nelson v. Oldfield*, 2 Vern. 76.

(*h*) *Rogers v. Bromfield*, Finch, 97; *Cawston v. Helwykes*, Id. 218.

granted to prevent further proceedings at law or in the Ecclesiastical Court (*i*).

11. *Of wills obtained through agency of the party benefited and by undue influence practised on persons of imbecile mind.*

By the civil law, if a person wrote a will in his own favour, the instrument was rendered void (*k*) as to so much as was in favour of the writer. That rule has not been adopted in its full extent by the law of England, which only holds that such conduct creates a presumption against the act, and renders necessary very clear proof of *volition and capacity*; nor does the law of the Ecclesiastical Court determine that the act is absolutely void, even though the person making the will is the attorney and agent of the testator. The suspicion is thereby increased; and, for obvious reasons, the testator reposes confidence in his attorney, and is less on his guard against imposition; while the attorney, from skill and knowledge, is more likely to be successful in such a contrivance, and has more influence, so as to obtain a blind acquiescence. Courts of equity have, in many instances, set deeds aside, on account of the relation of influence in the person obtaining, and of confidence in the person granting the benefit, as in the cases of *guardian and ward, attorney and client, agent and principal*, and the like; more particularly in respect to *attorney and client* (*l*). There is a particular jealousy and anxiety on the part of all Courts in guarding suitors against that sort of influence and knowledge which attornies possess and may exercise injuriously towards their clients, and in protecting the unwary against undue influence and control. Where that relation of confidence exists, and where the party frames the instrument for his own advantage and benefit, every presumption arises against the transaction. As in the case of an

(*i*) *Lowe v. Jolliffe*, 1 Dick. 388; *Jones v. Jones*, 7 Price, 665; *Bever-sham v. Springold*, 1 Cas. in Ch. 80.

(*k*) Dig. Lib. 48, tit. 10, s. 15; and Lib. 34, tit. 8; see Godolph. Orp. Leg. 86; 1 Lee, Eccl. C. 238 n.

(*l*) *Walmesley v. Booth*, 2 Atk. 25—27; *Saunderson v. Glass*, 2 Atk. 297; *Cray v. Mansfield*, 1 Ves. sen. 379; *Pierce v. Waring*, cited Id. 380; *Oldham v. Hand*, 2 Ves. sen. 259; see *ante*, pp. 353—356.

interested witness, it is not necessary to prove falsehood; a Court of law will not hear him at all. So, in the case of such an executor, it is not necessary to prove fraud and circumvention; he must remove the suspicion by clear and satisfactory proof (*m*).

The *onus probandi* lies in every case upon the party propounding a will; and he must satisfy the conscience of the Court, that the instrument so propounded is the last will of a free and capable testator. But if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce, unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased (*n*).

In a case in Ireland, where a testator devised his real estate, and without giving any legacies, or making any disposition of his personal estate, appointed his executor, a gentleman who had acted as his *confidential counsel* for several years, who drew his will from verbal instructions, without informing the testator of the rule of law which vests the personal estate undisposed of in the executor, for his own benefit (*o*); and the next of kin of the testator filed a bill, insisting that the executor ought to be compelled by the Court of Chancery to distribute the personal estate according to the statute of distributions; and the executor stated that he did not know the above rule of law at the time of making the will, and claimed a right to retain the personal estate for his own benefit—Sir *A. Hart*, C., acquitted the defendant of having practised any fraud or imposition on the testator as charged in the bill; but, upon principles of public policy, declared, “that,

(*m*) See *Middleton v. Forbes*, stated in 1 Hagg. Eccl. R. 394; *Barton v. Robins*, 3 Phill. Eccl. R. 455, n; *Ousley v. Wells*, Prerog. Trin. T. 1777.

(*n*) *Barry v. Butlin*, 2 Moore,

P. C. 482; 1 Curt. 638; *Baker v. Batt*, 2 Moore, P. C. 317; *Durling v. Loveland*, 2 Curt. 225; *Durnell v. Corfield*, 1 Rob. Eccl. R. 51.

(*o*) This rule has been altered by stat. 11 Geo. 4, and 1 Wm. 4, c. 40.

under the circumstances of the case, a Court of equity would not permit the executor to retain the clear residue of the testator's estate for his own benefit; and that he must be made a trustee of it, for the testator's next of kin; and laid down this general principle of equity, that, 'wherever a professional man is called on to give his services to a client, whether to prepare a deed or a will, the law imputes to him a knowledge of all the legal consequences to result, and requires that he should distinctly and clearly point out to his client all those consequences from whence a benefit may arise to himself from the instrument so prepared; and, if he fail to do so, a Court of equity will deprive him of it' (p). His Lordship, after adverting to the case of *Gibson v. Jeyes* (q), observed—"if those guards are thought necessary in matters of contract, the safety of families requires a much stricter hand to be held in a testamentary act. Men too frequently defer the duty of making a will to an extreme period of life, and to the bed of sickness. They are generally closeted with the lawyer, from a reluctance that their families should know what they are to expect; and, in such circumstances, whatever may be the respectability of the witnesses who attest the formal execution of the will, no family would be safe, if the law did not impose on the lawyer difficulties amounting almost to a disqualification to become a devisee for his own benefit. Where he is the hand to prepare the testament, he must be prepared to prove that the will is the spontaneous intention of the testator, by other evidence than that which may be read out of the testamentary paper" (r).

Though the testator and the maker of his will may stand in a relation favourable to the exercise of undue influence by the latter, and though there may be suspicious conduct, and some deficiency of capacity, yet satisfactory evidence of the *factum* may establish the instrument; it is not in law invalid. If the writer of a will takes any benefit under it, as the Courts look on such a transaction with jealousy, the authenticity of

(p) *Segrave v. Kirwan*, 1 Beatty, 157—166; see *Bulkley v. Wilford*, 8 Bl. 111; 2 Cl. & Fin. 102.

(q) 6 Ves. 266.

(r) *Segrave v. Kirwan*, 1 Beatty, 166—170; see *Maccabe v. Hussey*, 2 Dow & Clark, P. C. 440.

the will must be proved by stronger evidence than ordinary. In such a case, the capacity, free agency, freedom from surprise, and perfect knowledge on the part of the testator of what he was doing, will be subjects of minute inquiry. On such occasions, the *onus probandi* will be thrown with peculiar strictness on those who seek to establish the will; and this will be further increased, if the testator was, at the time, in a state of debility, if he was in the habit of placing great confidence in the devisee, if there was any thing private or clandestine in the transaction, or any other circumstance of a similar character(s). So, also, where the will is not written by the party benefited, but by his agency or procurement, the presumption will be strong against the act, which is not actually defeated, as it was by the civil law (t), provided the intention can be fairly deduced from other circumstances. Though the Court will not presume fraud, it will require strong evidence of intention (u). Though the proof of instructions is not necessary where the capacity is not doubtful, yet where imposition and custody are suspected, the defect of instructions is extremely material, more especially when the writer makes himself executor (v). Under such circumstances the Court demands the most decisive proof of the complete absence of influence and excitement at the preparation and making of the asserted will, and must require unimpeachable evidence of unbiassed volition and of clear capacity, and must expect it to be shewn by instructions coming from the deceased himself, and by an execution in the presence of witnesses above all exception (w). In cases where there is any doubt of capacity, or any suspicion of fraud, evidence of affection and testamentary declarations are generally adduced, to prepare the mind of the Court, and conduct it, as it were, to the testamentary act. In such a case, the first requisite would be instructions coming from the testator himself; if they cannot

(s) *Paske v. Ollatt*, 2 Phill. Eccl. R. 323; see 3 Hagg. Eccl. Rep. 467, 468.

(t) Dig. Lib. 34, tit. 8.

(u) *Billingham v. Vickers*, 1 Phill.

Eccl. R. 193, 194.

(v) *Middleton v. Forbes*, stated in 1 Hagg. Eccl. Rep. 398.

(w) *Dodge v. Meech*, 1 Hagg. Eccl. Rep. 620.

be proved, the defect may, by possibility, be remedied by something passing at the execution tantamount to instructions, or by subsequent recognitions so clear and direct as to supply the place of instructions.

A very remarkable case has been reported, combining almost all the unfavourable circumstances that occur in the framing of a will, (the testator being almost an idiot, and the party principally benefited almost a stranger,) written by the procurement of his father, who was the attorney of the testator, and the will itself drawn out from instructions given not by the testator himself, but by his attorney, the father of the legatee; and, besides these, a variety of other circumstances, clearly indicating a purpose of circumvention. In this case the testator died on the 20th November, 1824, aged about 74 years, leaving his sister his sole next of kin. His personal property amounted in value to 25,000*l.*; his real estate to 250*l. per annum.* The will was dated on the 14th of August, 1821, and bequeathed to his sister 2000*l.*; to his cousin 4000*l.*; to another person 1000*l.*; to the poor of Stratford-on-Avon, 50*l.*; to Henry Wyatt, the residue both of his real and personal property; and appointed Henry Wyatt sole executor. The codicil, dated on the 5th of August, 1822, after reciting the clause of the will giving 2000*l.* to his sister, revoked that legacy, and in all other respects confirmed that will. The will and codicil were propounded by Henry Wyatt the executor; and were opposed by the sister of the deceased. Both instruments were prepared from instructions, not given directly by the deceased, but through the intervention of the party interested, and were executed in the presence of the executor and residuary legatee, who was the attorney and agent of the deceased. It was not denied in argument—that the deceased, to a certain extent, was possessed of capacity, which, with clear proof, might give effect to a testamentary instrument; that, if the attesting witnesses could have spoken to instructions given by the deceased himself, to circumstances and conduct clearly and distinctly manifesting intention and volition, and that he fully comprehended the nature of the act, and evinced a voluntary wish and desire so to dispose of

his property—there was nothing in the evidence of incapacity sufficient to falsify such a case. The deceased was not insane, nor was he an idiot; he had a certain degree of eccentricity, but not delusion; he had a certain degree of weakness of understanding, that exposed him to imposition, but not that degree of imbecility which rendered him intestable. The result of the evidence as to capacity was, that the testator was a very weak man; that judging both from what he did, and from what he omitted to do, his understanding was much below par, and the legal standard of perfect capacity; that inertness, inactivity, indolence, torpidity of mind, inattention to his large property, were the leading characteristics and symptoms of his weakness; that he was therefore a person so far liable to be imposed upon, as to require the Court to look with vigilance and jealousy into the proofs of the *factum*; that he might possess a testable capacity; and that very strong and clear evidence of the *factum*, and of free and active testamentary intention might establish the executor's case. For the sister it was argued—that the disposition was in favour of a stranger in blood; that the parties interested were active in obtaining the instruments; that the will was prepared from instructions conveyed by the father of the executor—the codicil by the executor himself; that these persons were the attornies and agents of the deceased; that the presumption of law was against the act; that the law, though not positively invalidating, yet required the clearest proof of unbiassed intention, and full understanding of the nature and effect of such instruments: that the capacity of the deceased, though not intestable, yet was weak, and liable to circumvention and imposition; that the evidence of the *factum* did not clear up these difficulties, and was insufficient to support the testamentary papers; lastly, that there were such marks of fraudulent conduct in the executor, as called for his condemnation in costs. For the executor—that, though by the principle of law, where parties interested were active in the framing of the testamentary instrument, and stood in a particular relation to the testator, a greater degree of vigilance was required in investigating the transaction, yet, that this case would fully

satisfy the most jealous examination; that the deceased was not a person of doubtful, but of perfect capacity; that no circumstance of fraud attached upon the executor; that the evidence on the *condidit*, and of subsequent recognitions and conduct, fully established the testamentary intention, and the validity of the will and of the codicil. The learned Judge held that, under the several circumstances of suspicion attending this case, the proof of the *factum* was insufficient. The capacity of the deceased, though not intestable, was so far weak and inactive, as to require a cautious examination of any testamentary act, and proof beyond a mere formal execution; direct proof that he clearly understood and freely intended to make that disposition of his property which the will purported to direct. Added to the difficulty arising from weakness, it was a will in favour of *an agent and attorney*, in which case the law is jealous of influence on one side, and of blind confidence on the other; the instructions, instead of being given by the deceased, came from the parties benefited, and the will was prepared under the direction of the executor's father, the codicil by the executor himself; the execution of both instruments was merely formal, in the presence of the executor, without any thing to probe the capacity, or to supply the want of instructions; the suggested recognitions were insufficient in themselves, and being made, if at all, at a time when the deceased was in the possession of the executor, under his influence, and exposed to any impressions that might be made upon his mind—the Court, therefore, was of opinion, that the executor's case was not sufficiently established against all the presumptions and suspicions that attached to it, and pronounced, that the executor had failed in the proof of the will and codicil: but as actual fraud had not been established, no costs were given (*x*).

There was an appeal in the last case to the Court of Delegates, but that Court having been equally divided in opinion, no judgment was given (*y*). A commission of Adjuncts was afterwards issued, and the sentence of the Prerogative

(*x*) *Ingram v. Wyatt*, 1 Hagg
Eccl. R. 384.

(*y*) Deleg. 7th, 8th, 9th, and 20th
Jan. 1830.

Court was reversed (z), and probate of the will and codicil was decreed to the executor; and the costs of the appeal on both sides were directed to be paid out of the personal estate of the deceased. An application was then made for a commission of review, on the ground that the evidence was voluminous and contradictory, that the property in question was very large, and that divers important questions of law were involved in the sentence of the Court of Delegates, by which the petitioner conceived himself aggrieved (a). Lord *Brougham*, C., on refusing the commission of review, observed, "that the great admitted fact of suspicion in this case arose from the circumstance that the testator and the person to be benefited by his will stood in relation of client and attorney towards each other. This point the Court of Delegates had considered, and they were, in the result, satisfied that the other circumstances of the case were strong enough to rebut the presumption which necessarily arose from that relation; and which presumption, if they had not believed it to be rebutted, would have given a contrary turn to their decision. They had considered the proofs which had been given of the state of the testator's mind, his capacity to make a will, the singularity of his conduct, the eccentricity of his habits, and all those other circumstances relating to the testator personally, which were in the main admitted on both sides, although they were exaggerated by the evidence of some of the witnesses, and attempted to be softened by others. They had not overlooked the evidence which went to shew the feelings the testator expressed towards some of his relatives, the little care and interest he evinced respecting his property, and the little knowledge he had as to some part of it; and having well investigated and weighed all these, and all the other facts of the case, the Court of Delegates came to the conclusion, that the will in question *was the will of the testator, and that it was not, as was alleged on the other side, the will of the Messrs. Wyatt*. Unless, then, his Lordship could be satisfied

(z) Id. 12th, 14th, and 15th Feb.;
16th and 17th June, 1831.

ably argued before Lord *Brougham*,
C., on the 26th, 27th, 28th, 30th,
and 31st Jan. 1832.

(a) The case was very fully and

that the principles of law on which the Court decided were wrong, or that the facts were misstated, or misunderstood, it was impossible that he could recommend the Crown to grant a commission of review; a doubt was not sufficient; he must be convinced that the Judges were wrong" (b).

The result of these cases is, that where a paper has been drawn up by a person for his own benefit, or where he takes a considerable benefit under it, the presumption lies strongly against the act, and it requires to be proved by satisfactory evidence *dehors* the instrument, that it was the free and voluntary act of a capable testator, and executed with a full knowledge of its contents and effect. The presumption is still stronger where an only son is excluded, and requires to be removed by clear evidence of rational motives in the deceased to make such a disposition, by parol evidence, the *res gestæ*, or documentary evidence, which is the strongest of all (c).

If no suspicion of fraud exists, a will consistent with previous affection and declarations, and supported by recognition and circumstances shewing volition and capacity, is valid, though made *in extremis*, and though the instructions were conveyed through the party benefited (d).

In a case, where a bill was filed by an heir-at-law against residuary devisees, suggesting a trust for charitable purposes—one of the defendants was the attorney, who drew the will; but there was no evidence of any fraud, or of the alleged trust.—Lord *Eldon* said, "that he had always considered the fact, that the person who prepared the will is himself residuary devisee, an unfortunate circumstance, calling for a considerable degree of jealousy in the Court; but he did not by any means go the length that some Judges went, particularly Mr. Justice *Buller*, in a case from *Hampshire*, who considered that circumstance as almost decisive evidence of fraud. He knew cases, in which it is perfectly impossible fairly to impute fraud, as arising out

(b) *Wyatt v. Ingram*, 3 Hagg. Loveland, 2 Curt. 225; *ante*, p. 413.
Eccl. Rep. 466—469.

(c) *Butlin v. Barry*, 1 Curt. 619; (d) *Ross*, otherwise *Russ*, v. *Chester*, 1 Hagg. Eccl. Rep. 227.
2 Moore, P. C. 480; *Durling v.*

of such a circumstance. The bill must be dismissed unless the heir will take an issue *devisavit vel non*; to which he is entitled" (e).

Where an attorney who draws the will of a testator takes a benefit under it, the case is to be considered with peculiar jealousy, and the jury who try the validity of the will must be satisfied that the testator knew its contents, but their consideration need not be confined to direct evidence, and they may find for the will upon circumstantial evidence only (f). A codicil prepared by a solicitor, appointing him a joint executor, with a legacy of 500*l.*, which was read over to the testator who was blind, and at the time of the execution of fluctuating capacity in the presence of the attesting witnesses was pronounced against: there being no direct evidence that it was prepared in consequence of instructions from the testator, or satisfactory proof, that at the time of the execution he was cognizant of its contents, and in a condition to exercise, and did exercise thought, judgment, and reflection respecting the act he was doing (g).

In another case, the asserted will of a person of fluctuating capacity (totally abandoning the principles of a former disposition, made before the testator's faculties were impaired, and long adhered to) was pronounced against; and the executor, the person principally benefited, was condemned in costs, as, among other things indicative of fraud, he had himself given the instructions for the will, and his son alone, a minor, spoke to its execution (h).

Where a testator is proved to be of perfectly sound mind, and free from any suspicion of imposition having been practised upon him, the evidence of bare execution of a will is sufficient;

(e) *Paine v. Hall*, 18 Ves. 475, referring to the case of *Hicks v. Parr*, before Buller, J., at Winchester Assizes, 1789, cited by Lord Eldon in *Trimlestown v. Lloyd*, 1 Bligh, New Ser. 449, 458, 476; S. C. 1 Dow. 85; and in *Walker v. Stephenson*, 3 Esp. 284; and by Counsel, 4 Esp. 51, and noticed by

Buller, J., in *Revett v. Braham*, 4 Term Rep. 497.

(f) *Raworth v. Marriott*, 1 My. & K. 643.

(g) *Dufaur v. Croft*, 3 Moore, P. C. 136.

(h) *Dodge v. Meech*, 1 Hagg. Eccl. Rep. 612.

the law will infer the other necessary ingredients, that the contents were known and approved, and that the party intended to give them effect. Neither fraud, nor the absence of sound mind is to be presumed; but the circumstances of there being no evidence of instructions, and that the party who prepared the will takes a considerable benefit under it, excite the jealousy and awaken the vigilance of the Court; and in such cases something more than proof of a bare execution is required—As in a case, where the will was in the handwriting of, and prepared by, the *solicitor* of the testatrix, when she was alone in his office, and he was named joint *residuary legatee and executor*, and *large legacies* were given to himself and his family, and the will was attested by two neighbours of the solicitor casually called in, but who were not privy to the instructions for, preparation, or reading over of the will, but merely saw the deceased subscribe it, and had no reason to doubt her capacity.—The will, in that case, was opposed, on the ground of the weak capacity of the testatrix, and of fraud and imposition having been practised upon her; and also of legal incapacity arising from insanity; and it was alleged that the testatrix, from her youth, was a person of weak capacity and of deranged mind; that the wildness of her countenance and the expression thereof, and her general appearance, manners, conduct, and deportment, were such as to denote that she was a person of deranged intellect, and, as an insane person, was incapable of any act requiring thought and judgment; and that she was at all times considered and spoken of, and treated, by medical men, and by her family, relations, friends, and acquaintance, *as mad*; and her general habits, from the earliest period of her life to the day of her death, were described as irrational and extravagant—And it was alleged, that certain documents in her handwriting, which had been produced to support the will, were mere contrivances to give colour and effect to the fraud, as they were written by her either from dictation, or from the drafts which she was made to copy. In support of the will, it was urged that the deceased throughout her life was sane, was treated as such by her family and friends, was in the uncontrolled management of her property, in which

she displayed judgment and prudence; that, at various periods of her life, she was engaged in acts of business, which she conducted without the suspicion of derangement; and facts were alleged to shew the probability of the disposition in favour of the legatees; and explained some of the specific acts charged as insane, and exhibited a number of her letters written at different periods—The will was established on the ground that the documents written by the testatrix afforded full evidence of mind and intention, and that she understood the nature of the testamentary act in question, and that they not only repelled any appearance of fraud and circumvention practised on an understanding too weak to resist (*i*); but that they supplied such proof of sound mind as nothing short of decisive disqualifying insanity could defeat the testamentary effect of a disposition proceeding from such a mind and intention.—The Court decided that the evidence, so far as it was credible at all, did not, in its judgment, make out actual insanity; for no act was proved by credible witnesses which could not be accounted for by the excitement of liquor. Even the acts which might have been produced by that excitement were not constant and habitual, the exhibits in her own handwriting shewing, that, at the times when they were written, she was in a sound state of mind; and above all no fixed and settled state of delusion was proved by which the Court was enabled to say that at any one time, or on any one subject, the deceased was actually or essentially insane, so as to be legally incapacitated from disposing of her property, either by an act to take effect in her lifetime or after her death (*k*).

So also, in a case, where a testatrix, eighty-eight years of age, had made a will appointing one person sole residuary legatee, and by a codicil thereto, executed only six days before the death of the testatrix, named her *attorney*, who drew the codicil, joint residuary legatee with the first, who opposed

(*i*) See *Filmer v. Gott*, 7 Br. P. C. 70; *Fane v. Duke of Devonshire*, 6 Br. P. C. 137.

(*k*) *Wheeler and Batsford v. Alderson*, 3 Hagg. Eccl. Rep. 574—616.

the validity of the codicil, it was established by the Court of Delegates (*l*).

In another case, where a testator, when of sound mind, had written a testamentary paper, consistent with his long settled and fixed intentions and affections, which were adhered to as long as he retained his capacity, it was held, that *supervening* insanity was sufficient to account for the non-execution of such paper, and that such incapacity would not reflect back on previous eccentricity, so as to invalidate the paper as a testamentary act (*m*).

In another case, where the drawer and attesting witnesses of a will (revoking a former one) executed ten days only before the death of the testator, who was eighty-five years of age, were confirmed in their testimony as to his capacity, volition, and free agency, by adverse witnesses, and by his affections, declarations, and recognitions; the general bad character of the drawer (an attorney of low practice, who had been employed by the testator for many years) and slight discrepancies in the evidence of the *factum* were held not material, as it appeared that the testator possessed faculties equal to the act, and was not likely to have been imposed upon, the Court pronounced in favour of the will; and condemned the opposer of it, who had pleaded a fraudulent conspiracy, incapacity, and circumvention, (in the proof of which he failed) in the costs incurred by his allegation (*n*).

But in a case where a husband, by undue influence and marital authority, obtained from his wife (nine days before her death, when her mind was affected by delirium, and when she was labouring under a painful disorder, to allay which she took laudanum) a will, by which he was appointed *sole executor and universal legatee*, wholly departing from a former will deliberately made a few months before; it was held that the presumption was strong against the will so obtained by the husband; and the evidence not being satisfactory in support of it,

(*l*) *Bonner v. Matthews*, Serjeants' Inn Hall, 10th Feb. 1832.

Rep. 146—162; see *ante*, p. 387.

(*m*) *Hoby v. Hoby*, 1 Hagg. Eccl.

(*n*) *Bird v. Bird*, 2 Hagg. Eccl.

Rep. 142.

the Court pronounced against it, and condemned him in costs (*o*).

So also, where the execution of a codicil to a will was clandestinely, and without any previous instructions, obtained from a testator eighty years of age, only one month before his death, by his son (the person solely benefited) and his associates, and the disposition was contrary to the repeated former acts of the deceased, (the clearest proof of capacity and free agency under such circumstances being necessary), the Court pronounced against such codicil, and condemned the son in costs (*p*).

A bill will lie to set aside a will made under the influence of superstitious terrors. A strong case must be made out to set aside a will on the ground of *undue influence*: but where a person acting as the spiritual adviser of a testator takes advantage of that situation, to become the agent and manager of the testator's temporal affairs, and while holding those opposite characters, becomes a donee of very large gifts under the testator's will, there is strong ground made out for inquiry as to undue influence (*q*).

It has been laid down, that, if a man makes a will in his sickness by the *over importuning* of his wife, to the end that he may be quiet, this shall be said to be a will made by *constraint*, and shall not be good (*r*). A will of a married woman possessed of a separate estate with a power of appointment, having been prepared by her husband's solicitor, unknown to the testatrix, from instructions given by the husband, by which he was appointed sole executor, and residuary legatee, and executed by the testatrix under the influence and control of her husband on her death-bed, was declared void, and probate refused; it being according to the evidence in the cause contrary to the intentions previously expressed by the testatrix (*s*). The

(*o*) *Mynn v. Robinson*, 2 Hagg. Eccl. Rep. 179; see *Moss v. Brander*, 1 Phill. Eccl. R. 254.

(*p*) *Mackenzie v. Handasyde*, 2 Hagg. Eccl. Rep. 211.

(*q*) *Middleton v. Sherburne*, 4 Y. & Coll. 358; see *Huguenin v. Basely*, 14 Ves. 273; *Norton v. Reilly*,

2 Eden, 286; *Hylton v. Hylton*, 2 Ves. sen. 549.

(*r*) *Hacker v. Newborn*, Styles' Rep. 427; Vin. Abr. tit. Devise, (Z. 2), pl. 3, 7; and see Swinb. on Wills, part 7, s. 2.

(*s*) *Baker v. Batt*, 2 Moore, P. C. 317, 1 Curt. 125.

influence, to vitiate a testamentary act, must amount to *force and coercion destroying free agency*, it must not be the influence of affection and attachment, nor the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a will; further, there must be proof that the act was obtained by that coercion, by importunity which could not be resisted; that it was done merely for the sake of peace, so that the motive was tantamount to force and fear.

Thus, in a case where a codicil, written before the capacity of the deceased was attempted to be impeached, shewed the testator's great affection for, and confidence in, his wife, his anxiety for her comfort and gratification, and that she should not be disturbed in the enjoyment of his property; and whatever might have been her influence over the testator, it was not suggested that it was of a nature to vitiate the act: and it further appeared, that there was the general influence of an active, bustling, high spirited wife, over a good natured, easy husband; and that, in consequence of a paralytic attack, it was necessary she should take a decided lead in the management of the concerns of an inn kept by the husband; and that she exercised some control over his actions and conduct as a kind nurse and an affectionate wife naturally would; but no trace appeared of any unfair importunity, on the part of the wife, to induce him to alter his will or to do any testamentary act—Although the Court admitted that the wife possessed influence arising from the affection and deference of the husband, and from his wish, in the disposition of his property, to please her who was the principal means of acquiring it; yet that was held insufficient to vitiate the testamentary act; for, in order to do that, there must be proof of something amounting to force and coercion in the obtaining the act itself (*t*).

Such influence is much more readily inferred to be exercised by the husband over the wife, than by the wife over the husband. Thus, in a case where a *feme covert* having, under certain powers, made a will and codicil in February, 1818, (eight months after her marriage, by which, after making pro-

(*t*) *Williams v. Goude and Bennett*, 1 Hagg. Eccl. Rep. 577—611.

vision for her husband, and leaving sundry legacies, she bequeathed the bulk of her fortune to, and appointed executors, strangers in blood; such disposition (except the provision for the husband) being similar to a will made by her in 1816. The wife afterwards made a will on the 9th of March, 1827, and a codicil thereto on the 21st April, (she dying on the 8th May,) 1827; which papers, (except legacies to three servants, and rings to three friends), left all her property to her husband, and appointed him and a total stranger executors; the Court holding that the latter papers were obtained by the husband's undue influence, when her faculties were much impaired, pronounced for the will and codicil of 1816, and condemned the husband (who, though he denied the validity of the powers, and nominally prayed an intestacy, was the real party setting up the latter papers) in the costs of the executors of the will of 1816. Sir *John Nicholl* observed, "in inquiring into the *factum* of the latter will, it becomes material to examine the probability of this great change of intention; and it becomes the more necessary to examine that probability, if, at the time of making the disposition, the capacity of the testatrix was in any degree weakened or doubtful; still more, if the husband, in whose favour this great change is made, and who, from the relation in which he stood to the deceased, must almost necessarily have great influence and authority, should be the person originating the whole business of the new will. To examine, then, the probability of this change, it may be proper to consider the grounds and circumstances of making the first will. If that were made upon hasty, capricious, and temporary considerations, the departure from it becomes less improbable; but if made under motives long existing, and quite naturally inducing it, the adherence to it will be the more strongly presumed, and the circumstances to account for the complete revolution in her intentions will be required to be more forcible. Where, in addition to these circumstances—*First*, that the disposition in the new will is highly improbable—*Next*, that the husband had been endeavouring to get at her deeds and testamentary instruments; and further, that she was in a state of doubtful capacity—it is

found that the husband, as far as the evidence went, originated and conducted the whole business, representing or rather misrepresenting the previous facts, and being present at all the material parts of the transaction, the case proceeded to the evidence of the *factum* under presumptions of fraud and imposition, which hardly any evidence would be sufficient to repel. It would at least be extremely difficult to shew, that she was a free as well as capable testatrix; to shew that she had a real disposing testamentary mind, and an intention to abandon all the dispositions of her former will made so carefully, and adhered to so firmly. The strong presumption would be, that, in whatever she said and did, however it might impose upon the witnesses, she was a mere instrument and puppet in the hands of her husband. To revoke the former will, her spontaneous act, it was necessary that the deceased should be proved to have recollected, at least, its general contents; that she had distributed memorials among her friends; that she had given her husband a certain portion; that she had bequeathed the bulk of her fortune to those whom she had long adopted for that purpose; it was necessary that she should be proved, upon some rational grounds (negating the importunity of her husband) to have become desirous of abandoning all her former intentions; but to no part of her former will is there the least reference. That this new will was without the importunate influence of the husband, there is not the slightest appearance in any part of the evidence. There was nothing to convince the learned Judge that the mind of the deceased was sufficiently probed, to ascertain whether she was or was not either a free, or, as applied to such a will, a capable testatrix; nothing satisfactory to discover what her real wishes were, without the restraint and influence of her husband. To support such a complete revolution in the testamentary dispositions of the deceased, it was necessary to shew that she had recollection of what the former disposition was, even supposing there were no grounds to suspect a mere tutored acquiescence under the influence of her husband. The circumstances were all quite sufficient to require that the husband should afford the most satisfactory proof that the deceased was not a mere unresist-

ing instrument in his hands, so taught, tutored, and impressed, as to say and do all that was stated to have taken place. The learned Judge in conclusion observed, (considering the extreme improbability of this change of disposition; the means used by the husband to urge her to place her concerns in his hands; her long resistance till reduced to a weakened state of capacity; the presence of the husband conducting all these transactions), that it was not proved to his mind that the latter will was the real mind and wish of a capable and free testatrix; on the contrary, he was of opinion, that it was the will of the husband obtained by him by undue influence and marital authority, contrary to the real wishes and intention of the deceased, as far as she was capable at that time of forming any testamentary intention" (*u*).

In a case where a testator having, ten years before his death, when in perfect health, executed a will, and subsequently a codicil, conformable to his ascertained affections; and two years and a half before his death, (after a paralytic stroke producing at least great bodily infirmity), had executed a second codicil materially departing from those instruments, and, six months before his death, a third codicil, revoking the second and reverting to the former disposition, probate of the will and first and third codicils was granted, there being no satisfactory proof of a change in his affections, and the evidence of volition and capacity being, at least, as strong in support of the third as of the second codicil (*v*).

It was held in another case, that the clearest and most consistent evidence of capacity and volition is required to support a codicil conveying bequests of such extent as to be irreconcilable with the character of the deceased, and with her intentions, as proved by her affections and former testamentary dispositions;

(*u*) *Marsh v. Tyrrell and Harding*, 2 Hagg. Eccl. Rep. 84—141. In this case there was an appeal to the Court of Delegates, and (neither of the Common Law Judges consenting to the decree proposed by the majority) no judgment was given. A commission of Adjuncts

was afterwards issued, and the parties having entered into a compromise, the sentence was reversed by consent. *Tyrrell and Harding v. Marsh*, 3 Hagg. Eccl. Rep. 471.

(*v*) *King and Thwaites v. Furley*, 1 Hagg. Eccl. R. 502.

and where the deceased, at the time of the execution of such codicil (within ten days of her death), was in a state of extreme weakness and debility, all her confidential friends excluded or absent, and those only about her who were benefited under, or engaged in, the preparation or execution of the instrument (*w*).

It seems, that if undue influence be exercised over the mind of a testator in making his will, the provisions in the will, in favour of the person exercising that influence, are void; and that the will may be good as far as respects other parties: so that a will may be valid as to some parties, and invalid as to others (*x*).

Costs, in suits in the Ecclesiastical Courts, are, for the most part, in the discretion of the Judge, according to the nature and justice of the case; and the reasons for granting or refusing costs are generally publicly expressed at the time of giving judgment.

If a fraudulent conspiracy in procuring a will is established, the party who has framed and engaged in it will be compelled, in the Ecclesiastical Court, to pay all the costs incurred in debating it; while, on the other hand, if the grounds of opposition fail, if the imputation of fraud is not sustained, the party who has set up an unfounded charge, which he is unable to prove, must pay the costs which he has occasioned (*y*).

The vexatious opposition of a will renders a party liable not only to his own costs, but also to those of the opponent (*z*). The next of kin setting up a groundless opposition to a will, and pleading the testator's incapacity which was not established, will be liable to the whole costs (*a*); more especially after the lapse of time, as eight years since probate in the common form was granted (*b*). But a party opposing a will has a right to

(*w*) *Brydges v. King*, 1 Hagg. Eccl. R. 256.

(*x*) *Lord Trimlestown v. D'Alton and Others*, 1 Dow & Clark, P. C. p. 85; *S. C.* 1 Bligh, P. C. New Ser. 427. But it seems that a deed cannot be partially set aside for fraud. *Middleton v. Lord Kenyon*, 2 Ves. jun. 391.

(*y*) *Bird v. Bird*, 2 Hagg. Eccl.

Rep. 145; *Green v. Proctor and Newey*, 1 Hagg. Eccl. Rep. 337; *Hoby v. Hoboy*, Id. 162; *Constable v. Tufnell*, 4 Id. 465; see *ante*, pp. 418, 425.

(*z*) *Waters v. Howlett*, 3 Hagg. Eccl. Rep. 792-3.

(*a*) *Stratton v. Ford*, 2 Lee, Eccl. C. 216.

(*b*) *Evans v. Knight*, 1 Add. 229.

cross-examine the witnesses in support of the will, and will not become liable to costs by so doing (c).

12. *Of depositing the testamentary papers of lunatics in the Master's office, and of granting probate of the wills and letters of administration of the effects of lunatics.*

When it appears that a lunatic, who has been so found by inquisition, has executed a will or any testamentary papers, an order may be obtained, on petition to the Lord Chancellor, for depositing them in the office of the Masters in Lunacy, or in some other secure place, for safe custody, during the life or lunacy of the party. A certificate of the deposit of documents with such Masters should be given by them, and filed with the Secretary of Lunatics. An order was granted on the petition of the committee of the person and estate of the lunatic, to deposit his will, which had come into the hands of his committee many years ago, in the custody of the Master to whom the matter was referred, or with such other person as the Court should think proper, on an affidavit that the will was in the same state in which the petitioner received it. The next of kin were served with the petition, and consented (d). So, again, on the petition of three of the younger children and next of kin of a lunatic, the Lord Chancellor ordered the heir-at-law and committee of the estate of the lunatic, within a week after the service of the order, to deposit on oath in the Master's office, all wills and other testamentary papers in the custody of such committee, there to remain for safe custody until further order; and the Master was ordered to inquire and certify what wills or other testamentary papers of the lunatic did exist, or had existed, and where the same then were, or what had become of them, with liberty for the Master to examine any persons he might think necessary upon interrogatories or otherwise, for the better discovery of such matters: and the costs of the inquiry were directed to be taxed and paid out of the lunatic's estate (e).

Where the will of a lunatic had been deposited in the

(c) *Grindall v. Grindall*, 4 Hagg. October, 1842, *ante*, p. 96.

Eccl. R. 10; *ante*, pp. 379—381.

(e) *In re Jodrell*, 17 August,

(d) *In re Thomson*, 1 Russ. & 1827.

Mylne, 355; see 4th Order, 27th

Master's office, with other deeds and writings, pursuant to an order; on the petition of two of the executors named in such will, and proof of the death of the lunatic, the Master was ordered to cause such will to be taken to the proper officer of the Prerogative Court of the Archbishop of Canterbury, in order that the same might be duly proved and established (*e*).

In another case, an order was made on the petition of the committee of the estate of a lunatic, that his solicitor should deposit in the Master's office, upon oath, all wills and codicils, and all instructions for, and drafts of, wills and codicils, of the lunatic, there to remain until further order (*f*). And after the death of the lunatic, on the petition of his children, the Master was directed to open the box (deposited in his office under the last-mentioned order), containing the wills and codicils of the lunatic, and deliver the last will with all codicils thereto to a proctor named in the order, for the purpose of being exhibited and proved in the proper Ecclesiastical Court (*g*).

According to the present practice, on the death of the lunatic, if he has made any will, which has been deposited with the Masters in Lunacy, a petition must be presented, praying that the Masters may be directed to open the supposed will, and ascertain whether it contains any directions relative to the interment, and who are the executors, and praying also that it may be deposited with the proper officer of the Prerogative Court. The petition is heard by the Lord Chancellor, and a copy of the order made must be left with the Masters, and an appointment made upon summons for opening and depositing the will. The Master opens the will in the presence of the parties and gives a certificate of having so done. On the subsequent application of the parties by summons, the Master deposits the will at the Prerogative Office, the solicitor for the petitioner, and his proctor, being present. A certificate of depositing the will is also given by the Masters which, as well as the certificate of opening the will, is filed with the Secretary, and office copies of both certificates are taken (*h*).

The Master has after the death of a lunatic, been directed

(*e*) *In re Southby*, 28 November, 1829.
1827.

(*g*) *In re Humpleby*, 16 June, 1831.

(*f*) *In re Humpleby*, 18 June,

(*h*) *Elmer on Lunacy*, pp. 56, 57.

to look into the wills and testamentary papers of the lunatic deposited in the Master's office, and to certify such as he shall find to be the last will (*i*).

The will of a deceased lunatic, which had been deposited in the Court, was ordered to be opened with a view to arrangements for his funeral (*k*).

If a person makes a will and afterwards becomes a lunatic, equity will not entertain a suit, in his lifetime, to perpetuate the testimony of the witnesses to such will (*l*). Nor to perpetuate testimony of any other facts in which the next of kin as such may be interested.

An idiot can have no executor; for, being *non compos a nativitate*, he could at no time make a will: but a lunatic may have an executor; for lunacy is not a revocation of a will made in the absence of the disorder (*m*).

Idiots and lunatics are, both by the civil law and likewise by the common law, incapable of being executors or administrators; for such disabilities render them not only incapable of executing the trust reposed in them, but also, by their insanity and want of understanding, they are incompetent to determine whether they will take upon themselves the execution of the trust or not (*n*). Therefore it is settled, that if an executor become *non compos*, the Spiritual Court may, on account of such disability, commit administration to another (*o*).

If a person appointed an executor become *non compos*, the Spiritual Court will grant administration to another, usually to the party whom the Chancellor appoints committee; but such grant of administration will not prejudice any right of retainer which the *non compos* would have had, provided he had been capable of taking the administration (*p*). An administration

(*i*) *In re Cresswell*, 4 August, 1823. 364.

(*k*) *Ex parte Farrar re Montague*, 2 Jur. 462.

(*l*) *Sackville v. Aylworth*, 1 Vern. 105; see *post*, Chap. x. s. 1.

(*m*) 4 Rep. 61 b.; see *ante*, p.

(*n*) Godolph. Orph. Leg. 86; Bacon's Abr. tit. "Idiots and Lunatics" (D).

(*o*) Bacon's Abr. Ibid. *Hills v. Mills*, 1 Salk. 36.

(*p*) *Franks v. Cooper*, 4 Ves. 763.

may be revoked if the next of kin, to whom it has been granted, becomes *non compos* or otherwise incapable (*q*).

Where a sole executor or administrator becomes a lunatic, it is the ordinary practice of the Ecclesiastical Court to make a limited grant to his committee, for his use and benefit during his lunacy (*r*). And in a case where the executor had no beneficial interest and no committee had been appointed, administration with the will annexed was granted to the residuary legatee during the life and incapacity of the executor (*s*). So, where letters of administration *de bonis non* had been granted to three administrators, one of whom was afterwards found a lunatic by inquisition, the Court directed, upon the letters of administration so granted being brought in by the two sane administrators, and the committees of the third, special letters of administration, &c., should be granted to the two sane administrators, in order to supply the defect in the legal representation, occasioned by such lunacy (*t*). In a case where the surviving executor and residuary legatee in trust had been found a lunatic by inquisition, administration of the unadministered effects of the deceased was granted during the lunacy of the surviving executor and residuary legatee in trust, to the two joint residuary legatees for life, with the consent of the committee of the lunatic (*u*); and administration was decreed under circumstances precisely similar, except that there was no actual consent of the committee of the lunatic, but a personal service of the citation upon the committee, calling upon him to shew cause, &c., and no dissent had been expressed (*v*). One of two executors having become lunatic, the probate was brought in and a fresh one granted, reserving a power of making a like grant to the lunatic when he should become of sound mind (*w*). So, where an administratrix had become a lunatic, administration

(*q*) *Offley v. Best*, 1 Sid. 373; Bac. Abr. tit. Executors, (E 3.) 12; 4 Burn's Eccl. Law, 292, 8th ed.; Com. Dig. Administration, (B. 8.)

(*r*) 2 Add. p. 336, n.

(*s*) 3 Phill. Eccl. R. 497; see 3 Hagg. Eccl. R. 217.

(*t*) *In bonis Phillips*, 2 Add. R. 335; *In bonis Newton*, 3 Curt. 428.

(*u*) *In bonis Milnes*, 3 Add. 55.

(*v*) *Rodnall v. Webb*, Id. 56, n.

(*w*) *In bonis Marshall*, 1 Curt.

297.

was granted, limited during her lunacy. The letters of administration before granted to the lunatic were impounded in the registry, in order to be redelivered out in case of the lunatic's recovery (*x*). But, where a testator appointed two persons executors of his will, one of whom renounced, and the other was a lunatic under confinement, and no committee of her person or estate had been appointed, although it did not appear that any obstacle existed to the formal appointment of a committee, yet the Court refused to grant letters of administration with the will annexed to the daughter and residuary legatee (during the lunacy of the executor), without the sureties in the bond justifying according to the ordinary rule of the Court (*y*). Where a person died intestate, leaving a widow, a lunatic, and two grandchildren, his next of kin, the Court decreed administration to the two grandchildren jointly upon their exhibiting an inventory, and the sureties justifying (*z*).

Where an intestate left a widow and an infant child, and the former took out administration but became a lunatic; the estate being so small as to be unable to bear the expense of a commission of lunacy, administration was granted to the aunt of the infant for the use and benefit of the widow and infant, during the incapacity of the widow and the minority of the infant (*a*).

Administration, with the will annexed *de bonis non*, was granted to the executors of a sister, the administratrix deceased, for the use and benefit of the surviving sister, the sole next of kin, during her imbecility, without citing her next of kin (*b*). Administration of the effects of a Jew was granted to the secretary of the Great Synagogue, for the use and benefit of the next of kin (a Jewess) who was of unsound mind, during her lunacy, her next of kin having been first cited (*c*).

It is the practice of the Ecclesiastical Court to grant administration for the use and benefit of a lunatic, though the person

(*x*) *In bonis Binckes*, 1 Curt. 286.

(*a*) 1 Lee's Eccl. C. 625.

(*y*) *In bonis Hardstone*, 1 Hagg. Eccl. Rep. 487.

(*b*) *In bonis Southmead*, 3 Curt. 28.

(*z*) *In bonis Williams*, 3 Hagg. Eccl. Rep. 217.

(*c*) *In bonis Joseph*, 1 Curt. 907.

alleged to be so has not been found a lunatic by inquisition. When such a case occurs, the Ecclesiastical Court requires affidavits stating the fact of lunacy, and that no inquisition has been had, and, of course, no committee appointed. The Court then grants administration to the next of kin of the lunatic, for the use and benefit of the lunatic pending the lunacy, and it requires sureties in double the amount of the property, and such sureties must justify (*d*). In *re Crump* (*e*), such administration was granted during the incapacity of an executor. But such an application was refused when the grant was asked for without justifying the security (*f*). Where the next of kin of a deceased lunatic was of unsound mind, though not so found by inquisition, a transfer of the lunatic's personal estate was directed by the Court of Chancery to be made to the person to whom administration *durante animi vitio* of such next of kin had been granted agreeably to the practice of the Ecclesiastical Court (*g*).

The Ecclesiastical Court will not, when a competent party is opposing a will, stay the admission of the executor's allegation propounding such will until the appointment of a committee of one of the next of kin, who was a lunatic, be confirmed, especially where such committee was already a party to the suit as *curator* of the other next of kin (*h*). Where administration has been granted on account of the mental incapacity of a party, it may be revoked on his subsequent recovery (*i*). Administration of the effects of a wife who was proved to have been insane at the time of her marriage, was refused to the husband on the ground that the marriage had been illegally contracted (*k*).

By the law of Scotland, the power of disposition by *will* is confined to *moveable subjects*, and does not extend to

(*d*) Communication from Dr. Lushington, 2 My. & K. 4.

(*e*) 3 Phill. Eccl. R. 497; and see *re Hinckley*, 1 Hagg. 477.

(*f*) *Ante*, p. 435.

(*g*) *Ex parte Evelyn*, 2 My. & K. 3

(*h*) *Tyrrell v. Jenner*, 2 Hagg. Eccl. Rep. 72.

(*i*) Com. Dig. Administration, (B. 8).

(*k*) *Browning v. Reane*, 2 Phill. Eccl. R. 69; see *post*, Chap. xi.

immoveable and heritable rights (*l*); but such power cannot be exercised by idiots, nor by furious persons during their furiosity (*m*).

(*l*) Stair's Inst. B. 3, tit. 8, s. 29, Ersk. Inst. by Ivory, 874.

(*m*) Stair's Inst. B. 3, tit. 8, s. 37. As to what constitutes a sound disposing mind, whether considered apart from, or combined with, circumstances of undue influence, or fraud and circumvention, may be collected from the cases of *Towart v. Sellars*, 5 Dow, P. C. 231—247;

White v. Ballantyne, 1 Shaw, 272; *Watson v. Noble's Trustees*, 4 Shaw & Dunlop, 209; *M'Diarmid v. M'Diarmid*, Id. 583; S. C. 3 Bligh, N. Ser. 374; see Ersk. Inst. B. 4, tit. 1, s. 27; and *Tulloch v. Viscount Arbuthnot*, 26 Jan. 1759; 1 Lord Kaimes' Princ. of Eq, 106—108, 3rd ed.

CHAPTER VIII.

OF THE ALIENATION OF LUNATICS' ESTATES BY THE DIRECTION OF THE LORD CHANCELLOR, OR OTHER PERSONS INTRUSTED BY THE SIGN MANUAL WITH LUNATICS.

SECTION I.—*Of leases of the estates of lunatics.*

II.—*Of the sale and mortgage of the estates of lunatics, for the payment of their debts and other purposes.*

III.—*Of conveyances of estates, and the transfer of funds, vested in lunatics as trustees or mortgagees.*

 SECTION I.

Of Leases of the Estates of Lunatics.

As the committee of the estate of a lunatic has no interest in his estate, but is considered as a mere bailiff (*a*), such committee cannot, of his own authority, grant leases of the lunatic's estate (*b*). And it seems to have been formerly considered, that such a lease, made even by the order of the Court of Chancery, was not valid at law; because the King could not grant it (*c*). Lord *Eldon*, C. held that he could make a lease of the lunatic's estate only during the lunacy; and that a tenant, trusting to the order of the Court, and taking a lease, might be ejected by the lunatic if he recovered (*d*). Before

(*a*) *Ante*, p. 250.

(*b*) *Foster v. Marchant*, 1 Vern. 262; *Knipe v. Palmer*, 2 Wils. 130.

(*c*) *Knipe v. Palmer*, 2 Wils. 130; and see preamble of the act of 11 Geo. 3, c. 20. And it seems that, by the law of Scotland, the tutors of idiots, &c., cannot make a lease

to endure beyond the term of their administration. *Craig*, Lib. 2, dieg. 10, sect. 1; *Reay v. Anderson* and Others, 5 February, 1809; *Mor. Dict. of Decisions*, pp. 16, 385; *Colt v. Colt*, Id. 16387.

(*d*) *Ex parte Dikes*, 8 Ves. 79.

the statutes for enabling committees, by the direction of the Lord Chancellor, to grant leases of the estates of lunatics, orders were made for granting such leases if the lunatic should so long live, and continue a lunatic (*e*).

It has been before stated, that the Lord Chancellor had, formerly, no power to authorize the committee of a lunatic tenant for life, with power of leasing, to execute such power (*f*). But by statute 43 Geo. 3, c. 75, s. 3, the power of leasing freehold and copyhold hereditaments of lunatics seised either for the term of their natural lives, or for some other estate, with power of granting leases and taking fines, reserving small rents on such leases for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or for terms of years absolutely—might be executed by the committee of the estate of such person, under the direction and order of the Lord Chancellor, &c., duly intrusted, &c.

Where lunatics were seised or possessed of freehold or copyhold estates in fee or in tail and an absolute interest in leasehold estates, the Lord Chancellor, &c., of the United Kingdom and of Ireland, respectively intrusted as aforesaid, might order the committees of the estate of such lunatic to make such leases of the freehold, copyhold, or leasehold estates of such persons respectively, according to his or her interest therein respectively, and to the nature of the tenures of such estates respectively, for such term or terms of years, and subject to such rents and covenants as such Lord Chancellor should direct. (*ff*). The act 43 Geo. 3, c. 75, was repealed by the statute 11 Geo. 4 and 1 Wm. 4, c. 65.

Execution of powers of leasing reserved to lunatics.—Where any person, being lunatic (*g*), is or shall be seised or possessed of any land (*h*), either for life or for some other estate, with power of granting leases and taking fines, reserving small rents

(*e*) *In re Davies*, 30 March, 1779; *In re Stephenson*, 4 Aug. 1779.

(*f*) *Ante*, p. 261.

(*ff*) 43 Geo. 3, c. 75, s. 4.

(*g*) The word lunatic includes any idiot or person of unsound mind, or incapable of managing his

affairs. 11 Geo. 4 & 1 Wm. 4 c. 65, s. 2.

(*h*) The word land extends to “any manor, messuage, tenement, hereditament, or real property, of *whatsoever tenure*, and to property of every description transferrable,

on such leases, for one, two, or three lives in possession or reversion, or for some number of years determinable upon lives, or for any term of years absolutely, such power of leasing which is or shall be vested in such person being lunatic, and having a limited estate only, shall and may be executed by the committee of the estate of such person, under the direction and order of the Lord Chancellor, intrusted by virtue of the Sovereign's sign manual with the care and commitment of the persons and estates of lunatics.

Where any person, being lunatic, is or shall be seised or possessed of or entitled to any land in fee or in tail, or to any leasehold land for an absolute interest, and it shall appear to the Lord Chancellor, intrusted as aforesaid, to be for the benefit of such person that a lease or under-lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other purposes, the Lord Chancellor, intrusted as aforesaid, may order and direct the committee of the estate of such lunatic to make such lease of the land of such persons respectively, or any part thereof, according to his or her interest therein respectively, and to the nature of the tenure of such estates respectively, for such term or terms of years, and subject to such rents and covenants as the Lord Chancellor, intrusted as aforesaid, shall direct (*k*).

Lease by lunatic tenant in tail in possession not authorised.—On the petition of the committee of the estate of a lunatic, it appeared that the lunatic, under a settlement, was tenant in tail in possession of certain lands, containing coal mines, and that proposals had been made for granting a lease of such mines for twenty-one years, upon terms approved by the Master, and the petition prayed that the Master's report might be confirmed, and a lease directed to be executed accordingly. It was contended, with reference to the statutes 11 Geo. 4 and

otherwise than in books kept by any company or society, or any share thereof, or charge thereon, or estate or interest therein." 11 Geo. 4 and 1 Wm. 4, c. 65, s. 2.

(i) 11 Geo. 4 & 1 Wm. 4, c. 65, s. 23.
 (k) 11 Geo. 4 & 1 Wm. 4, c. 65, s. 24.

1 Wm. 4, c. 65, s. 24, and 3 & 4 Wm. 4, c. 74, s. 15, that the Lord Chancellor might authorise the committee to grant the lease in question.

Lord *Brougham*, C., was clearly of opinion that the act 3 & 4 Wm. 4, c. 74, did not empower him to permit the committee to make any lease, which the Lord Chancellor, on behalf of the lunatic tenant in tail, could not have authorised prior to the passing of that act. To make such an order as was prayed would in fact be to enable, the committee to bar the estate tail *pro tanto*, which his Lordship considered not to be within the intent of the act; and his Lordship added that; in his opinion, the object could only be accomplished by means of a private act of Parliament, if the parties thought it worth while to go to that expense (*l*).

Mode of obtaining leases.—By the former practice in lunacy, when the committees of the estate of a lunatic had received proposals for leases of his estates, and were desirous of granting them, they presented a petition (notice of which was to be given to the heir-at-law and next of kin of the lunatic,) to the Lord Chancellor, for a reference to the Master to inquire and certify whether it would be for the benefit of the lunatic's estate, that the leases in question should be granted of the property mentioned in the petition, and upon what terms and conditions, having regard to the lunatic's interest in the estates. But now the Master in Lunacy is at liberty, without special order, to receive any proposal or conduct any inquiry as to setting or letting the estate or otherwise respecting the property of any lunatic, and may report thereon as he shall see fit; but such report shall be submitted for confirmation, as reports made upon special reference (*m*).

On a proposal for leasing the lunatic's property being laid before the Masters in Lunacy, one of them on being attended by the solicitors for the necessary parties will consider such proposal, and the evidence in support of it. The Master, after having been furnished with affidavits of the nature and value

(*l*) *In re Starkie, Ex parte Clayton*, 3 My. & K. 247; see 32 Hen. 8, c. 28; *ante*, p. 327.

(*m*) 13 Order in Lunacy, 27 Oct. 1842, *ante*, p. 277; see *M'Dermott v. Kealey*, Jac. R. 374.

of the property, made by persons having a knowledge of the subject, and with such other evidence as he may require, makes his report, and, if he finds that it will be for the benefit of the lunatic and his estate, that the leases should be granted, he will settle and approve of the draft of the proposed lease.

After the Master has made his report in favour of the lease being granted, and the lessee has agreed to accept it upon the terms proposed—a petition must be presented by the committees of the estate, for the confirmation of the Master's report, and that they may be at liberty to grant the lease mentioned in it. Upon the confirmation of the report, it will be further ordered, that upon the Master signing his allowance of the lease—the committees execute it upon the lessees executing a counterpart thereof. And it is usually further referred to the Taxing Master to tax the petitioners and next of kin of the lunatic, their reasonable and proper costs incurred in the application, which, after being taxed, will be ordered to be paid by the committee of the lunatic's estate out of the rents and profits of it (*n*).

Before the general order, in some instances, where the Lord Chancellor had been satisfied by the evidence offered in support of a petition, of the propriety of granting the lease proposed, the usual reference to the Master on the subject was dispensed with, and the committee ordered to execute a lease. Thus where the property of the lunatic was very small, and he was not possessed of funds for bearing the expense of a reference, and a surveyor had certified that a proposed lease of a house in London would be highly beneficial to the lunatic's estate, the committee of the estate was ordered to carry the agreement for granting a lease into effect, and to execute a lease without any reference to the Master (*o*). So where it appeared that the lunatic's income did not exceed 120*l*., and that an eminent and experienced surveyor had reported in favour of the proposed lease of a messuage belonging to the lunatic, a reference to the Master on the subject was dispensed with, upon the counsel for the committee of the lunatic under-

(*n*) See the form of a lease of a lunatic's estate in the Appendix.

(*o*) *In re Fidler*, 12 May, 1825.

taking to settle and approve of a proper lease being made upon the terms mentioned in the petition; which the committee was ordered to execute, and a reference was only made to tax the costs of the application and consequent thereon (*p*). It is probable that an inquiry before the Master will not be dispensed with under the New Orders.

The Court has made an order for granting a lease of coal mines belonging to a lunatic. Thus, where the Master had found by his report that it would be for the benefit of the lunatic and his estate to grant a lease of the coal mines belonging to him and contiguous to other coal works, such report was confirmed, and it was ordered that the committee of the estate should be at liberty, in the name and on the behalf of the lunatic, to grant a lease of such coal mines to the owners of the adjoining coal works for the term of thirty years, upon the terms mentioned in the report, the lease to be settled by the Master, and the costs of the committee of the estate and next of kin of the lunatic to be taxed, and paid out of the rents and profits of the lunatic's estate (*q*).

On a petition presented by one of the receivers appointed in a lunacy praying the confirmation of the Master's report, that it would be for the benefit of the estate of the lunatic that a lease should be granted on the terms specified, and a reference to approve a lease, and taxation of the costs of the petitioner and the next of kin, and the committees of the estate of the lunatic, relating to the proposal for and granting the lease, to be paid by the petitioner and allowed in passing his accounts—Lord *Eldon*, C., said, the practice in lunacy is, for the committee to pay the expenses of the inquiry, and the lessee of the lease. The order made in that case directed the Master to tax the petitioner and the committees of the lunatic's estate and his next of kin their costs and expenses incurred about the proposal for granting the lease, and of the application and relating thereto; and such costs, when taxed, were directed to be paid by the petitioner out of the rents and profits of the lunatic's estate, and allowed in passing his accounts, but the

(*p*) *In re Spring*, 4 Aug. 1831.

(*q*) *In re Percival*, 20 July, 1822.

costs and expenses of the lease and counterpart were to be borne by the petitioner (*r*).

An application was made on the behalf of persons representing the tenant, for a reference to the Master, to inquire and report as to the liability of a lunatic to renew the lease under which the premises were held. The application was granted, and the right of the parties seeking the renewal was established; it was held nevertheless, that the costs of the petition and of all the proceedings thereunder should be borne by the applicants. The proper course for a party desirous of establishing an adverse claim against a lunatic is to apply in the first instance to the committee of the estate; the committee informs the Court of the fact, and the Court then judges whether or not the lunatic is bound to do the act required. In this way no adverse costs are incurred, and every thing necessary is done on the lunatic's part. If in any case the committee should refuse or neglect to inform the Court when applied to, the other party might then perhaps be justified in presenting a petition on his own part, and the Court would know how to deal with the costs in such a case. The Court expected the committee to come forward and ask for the reference to ascertain what is binding upon the estate (*s*).

The question as to the payment of the costs incurred by granting a lease of the lunatic's property, depends in many cases upon the agreement of the parties; but, in the absence of any stipulation upon the subject, it should seem that the costs of the reference, and of the necessary orders of the Court, must be paid out of the lunatic's estate, and one-half of the expenses of the lease and counterpart by the lessee, according to the general rule (*t*).

Orders have been made for letting the estates of lunatics by auction. Thus, where part of the property of the lunatic consisted of houses for which no offer had been made for taking leases, and by reason of the peculiar character of such property

(*r*) *Ex parte Prickett, In re*
Duchess of Norfolk, 3 Swanst. 130.

(*s*) *In re Doolan*, 3 Dru. & War.
442; 2 Con. & L. 232.

(*t*) See *Grissell v. Robinson*, 3
Scott, 329; *Webb v. Rhodes*, 3
Bing. N. R. 732.

it had been found difficult to fix fines at which it would be for the interest of the lunatic to renew; it was ordered that the committee of the estate of a lunatic should be at liberty, in the name and on behalf of the lunatic, to offer for sale by public auction the property mentioned in the petition, either in one lot or several lots, as the petitioner might be advised was most for the benefit of the lunatic, for one, two, or three life or lives, or for a number of years determinable on lives, as might be deemed most proper, on payment of the best fines which could be obtained, subject to such conditions as should be produced, and the subsequent approval of the Master (*u*).

Sir *A. Hart*, C., disapproved of the practice of letting the estates of lunatics by auction to the highest bidder, without giving any preference to an old tenant; and held, that the Court possesses the discretion of a landlord in the management of the real estates of lunatics, and should exercise it in letting them, and ought not to be governed solely by the highest bidding. On the hearing of a petition relating to the management of the lunatic's estate, Sir *A. Hart*, C., observed, with disapprobation, upon the practice which prevails in letting the lands of lunatics and infants, by which the good conduct of the old tenant is not considered, but the lease is made to the highest bidder, without regard to the old tenant's claim to be preferred; and said, that the usage of the land occasioned by such a mode of dealing must be wasteful to it, and prejudicial to the heir. That the Court possesses the discretion of a landlord over the estates of lunatics and infants, which it would be wholesome to exercise more actively. It ought not to sanction the mischievous practice of putting up the land by auction, without any preference to the tenant who has preserved or increased its value by proper cultivation (*v*).

Before the New Orders a reference in general terms was sometimes made to the Master, to inquire as to the expediency of granting leases of the estates of lunatics from time to time, with liberty for him to make a separate report. So it was referred to the Master to inquire, whether it would be proper to grant

(*u*) *In re The Earl of Portsmouth*,
14 July, 1828.

(*v*) *In re Ball*, 1 Molloy's Rep.
tempore Hart, 141.

any, and what, leases for years, or otherwise, of any and what parts of the lunatic's estates, on the expiration of the leases and tenancies on which parts of his estate were then respectively held, and if so upon what terms, covenants, and conditions (*x*).

A committee taking upon himself to let the lunatic's estate without proper authority will be answerable for the consequences. The committee of a lunatic's estate, who in conjunction with the heir-at-law of the lunatic, had let the estate without obtaining the sanction of the Court, three years afterwards, upon the report of the Master finding that a larger rent might have been obtained, was held responsible for the amount of such larger rent, and ordered to pay all the costs occasioned by his having let the property at an undervalue (*y*).

In one case, the Lord Chancellor would not allow the committee of the estate of a lunatic to take a lease of part of his property, although the Master approved of it. Thus, where the Master had reported that it would be for the benefit of the lunatic that a dwelling-house and land belonging to him, when repaired in the way proposed, should be let on lease to one of the committees of the lunatic's estate for the joint lives of himself and the lunatic at the yearly rent and subject to the terms mentioned in the report, such committee being entitled to the property in question next in remainder expectant upon the death of the lunatic. On praying a confirmation of the Master's report, and that the other committee of the estate might execute a lease to the petitioner on his executing a counterpart—Lord *Lyndhurst*, C., refused to confirm the Master's report, and ordered that such committee might be at liberty to occupy the said dwelling-house and land at the rent and upon the terms and conditions mentioned in the Master's report, until further order (*z*). Lord *Eldon*, C., refused to confirm the Master's report, that it was expedient to grant building leases of part of the lunatic's estate for the term of 999 years, and directed the Master to review his report (*a*).

(*x*) *In re Cooper*, 3 April, 1828.

(*y*) *In re Wilkins*, 6 Jur. 308.

(*z*) *In re Sir Thomas Smyth*, 29th July, 1829.

(*a*) *In re Starkie*, 2 Russ. 197 ; see 43 Geo. 3, c. 75, ss. 3, 4, *ante*, p. 439.

The tenant of a lunatic's estate was relieved upon petition against an ejectment, founded on a forfeiture by breach of covenant to repair, upon the repairs mentioned in the surveyor's report having been completed, and upon payment of all the costs incurred by the lunatic's estate, in consequence of the breach of covenant and the action of ejectment (b).

Acceptance of surrenders and renewal of leases on behalf of lunatics.—By the statute 11 Geo. 3, c. 20 (c), in all cases where any lunatic was entitled to renew any leases for lives or for any term absolute, or determinable on lives, such lunatic or his committee might, by the direction of the Lord Chancellor, signified by order made upon petition in a summary way, accept a surrender of such leases, and execute new leases, which it was declared should be deemed as good and effectual as if such lunatic had been of sane mind. And now where any person, being lunatic, is or shall be entitled or has a right, or in pursuance of any covenant or agreement, might, if not under disability, be compelled to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute, or determinable on the death of one or more person or persons, or otherwise, the committee of the estate of such lunatic, in the name of such lunatic, by the direction of the Lord Chancellor, intrusted as aforesaid, to be signified by an order to be made in a summary way, upon the petition of such committee, or of any person entitled to such renewal, may from time to time accept of a surrender of such lease, and make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of the act, for and during such number of lives, or for such term or terms of years determinable on such number of lives, or for such term or terms of years absolute, as were mentioned or contained in such lease so surrendered at the making thereof, or otherwise, as the Lord Chancellor, intrusted as aforesaid, by such order shall direct; and this provision shall extend as well to cases, where the lunatic shall not be compel-

(b) *Ex parte Vaughan, In re Edridge*, 1 Turn. & R. 434.

(c) Repealed by 11 Geo. 4, and 1 Wm. 4, c. 65, s. 1.

lable to renew but it shall be for his benefit to do so, as to cases where a renewal might be effectually enforced against the lunatic if of sound mind (*d*).

No renewed lease shall be executed by virtue of that act, in pursuance of any covenant or agreement, unless the fine (if any), or such other sum or sums of money (if any), as ought to be paid on such renewal, and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid and performed; and counterparts of every renewed lease to be executed by virtue of that act shall be duly executed by the lessee (*e*).

Premiums how to be paid.—All fines, premiums, and sums of money, which shall be had, received, or paid on account of the renewal of any lease, after a deduction of all necessary incidental expenses, shall be paid, if such renewal, should be made in the name of a lunatic, to the committee of the estate of such lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the Lord Chancellor, intrusted as aforesaid, shall direct; but upon the death of such lunatic, all such money as shall arise by such fines or premiums, or so much thereof as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatic, be considered as real estate, unless such lunatic shall be tenant for life only, and then the same shall be considered as personal estate (*f*).

On the petition of the committee of the person and estate of a lunatic, it was referred to the Master to receive proposals for granting leases of the remaining part of the lunatic's estate, which were or might become out of lease, for terms or number of years determinable on the dropping of a life or lives, or for adding a life or lives to subsisting leases, (which were actually on lease for lives or years determinable on the dropping of a life or lives at the date of a settlement), and so from time to time as the subsisting or new leases to be granted should

(*d*) 11 Geo. 4 and 1 Wm. 4, c. 65, s. 19, extended to Ireland by stat. 5 & 6 Wm. 4, c. 17.

(*e*) 11 Geo. 4, and 1 Wm. 4, c. 65, s. 20.

(*f*) *Ib.* s. 21.

determine, or as a life or lives named therein should drop; with liberty to report thereon as might be necessary (*g*).

The Lord Chancellor, in some cases, exercises a jurisdiction in lunacy, upon petition, although no bill has been filed, over the tenants of the property of a lunatic. Thus, on the petition of the committee of the estate of a lunatic, the tenant of his lands was restrained by the order of the Court from cutting timber, and from committing waste on lands in his occupation (*h*). And in another case the persons who claimed as heirs-at-law, and next of kin of the lunatic, were restrained after his death by the order of the Court, made on the petition of the committee of the estate, from proceeding in a distress for arrears of rent, and from taking any proceedings under replevin bonds, and from distraining on the tenants of the lunatic's freehold estates, until further order (*i*).

Surrender and renewal of leases on behalf of lunatics.—In all cases where any person, being lunatic, shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, the committee of the estate of such person may apply to the Lord Chancellor of Great Britain, intrusted with the care and commitment of lunatics, by petition or motion in a summary way; and by the order and direction of the Lord Chancellor, intrusted as aforesaid, such committee shall and may be enabled from time to time, by deed or deeds, in the place of such lunatic, to surrender such lease or leases, and accept and take, in the name and for the benefit of such lunatic, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of that act, for and during such number of lives, or for such term or terms of years, absolute or

(*g*) *In re* The Earl of Portsmouth, 6 Ir. Eq. R. 469.
11 Dec. 1828.

(*h*) *In re* Frank, 30 June, 1827; As to the abatement of the rents of
In re Creagh, 1 Ball & B. 108; *In* tenants of the property belonging
re Chinnery, 1 Jones & Lat. 90; to lunatics, see *ante*, pp. 250, 251.

determinable as aforesaid, as was or were mentioned or contained in the lease or leases so surrendered at the making thereof respectively, or otherwise, as the said Lord Chancellor, intrusted as aforesaid, shall direct (*k*). And it is provided (*l*), that the fine for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the lunatic for whose benefit the lease shall be renewed, or be a charge upon the leasehold premises, together with interest for the same, as the Lord Chancellor, intrusted as aforesaid, shall direct and determine. And (*m*) that every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, and incumbrances, dispositions, devises, and conditions, as the lease to be surrendered would have been subject to, in case such surrender had not been made (*n*).

The application to the Court under this statute must be by petition, on notice to all parties interested, that it may be referred to the Master to inquire whether the lunatic is interested in or entitled to the property leased, or any part thereof, within the intent and meaning of that act. The petition for a reference should state a regular deduction of the title deeds, and other facts under which the lease has devolved upon the lunatic. By virtue of the order made on such petition, the parties must attend before the Master and produce a statement of the title, and of the facts, to shew the nature of the interest vested in the lunatic; all which is to be verified by the production of the original deeds, and such other evidence as the Master may require, upon which he will make his report to the Court. A motion upon petition must afterwards be made to confirm the report, when the Court will exercise its judgment thereon, and either direct the committee of the lunatic to surrender as directed by the Master, or, if a difficulty arises upon

(*k*) 11 Geo. 4, and 1 Wm. 4, c. 65, s. 13.

(*l*) 11 Geo. 4, and 1 Wm. 4, c. 65, s. 14.

(*m*) Id. s. 15.

(*n*) The 29 Geo. 2, c. 31, which contained similar provisions, is repealed by 11 Geo. 4, and 1 Wm. 4, c. 65, s. 1.

it, the Court will order the report to be reviewed by the Master as to the points objected to, and, after it has been reviewed, such order as the Lord Chancellor shall think proper will be made.

If a trustee for a lunatic renew a lease for his own benefit, it is a breach of trust, and a committee who had done so was ordered to be removed (*o*).

If the lease at the time of the lunacy was made to a trustee for the lunatic, on a renewal it will be so continued, as the Court will not change the estate; but, if the old lease was made to the lunatic himself, and only taken out of him by the act of the Court, the new lease will be ordered to be taken in his name, and not in that of his committee; and an inquiry as to that fact is occasionally directed (*p*). Thus, in a case where the trustees of a marriage settlement of a lunatic were desirous of obtaining a renewal of a lease held of a corporation, it was referred to the Master to inquire and certify whether it would be for the benefit of the lunatic and his trust estates to renew the lease of the parsonage, and of the copyhold estates mentioned in the order; and if so, upon what terms, and by whom the fines and fees of such renewals ought to be paid; in making which inquiry the Master was to have due regard to the lunatic's interest in the estate. After the Master had made his report in favour of a renewal, the committees of the estate of the lunatic, and the trustee under his settlement, were ordered to renew the lease, and the grants of the copyhold premises, upon the terms mentioned in such report; and such renewed lease and grants were directed to be taken in the name of the surviving trustee of the settlement upon the trusts thereby declared, and the fines, fees, and expenses of such renewals were ordered to be paid by the trustees out of the income of the lunatic's estate; and for the purpose of obtaining such new leases and grants, it was ordered that the trustee should surrender the old lease, and the committee of the lunatic's estate the copyhold premises, to the corporation, and

(*o*) *Ex parte Phelps*, 9 Mod. 357, 5th ed. (*p*) *Ex parte Jermyn*, 3 Swanst. 131.

that all necessary parties should concur in such renewals; and that the costs, to be taxed by the Master, should be paid by the trustees out of the money in their hands as trustees of the lunatic's estate (*q*).

And, in another case, on the confirmation of the Master's report, it was ordered that the committee of the estate of the lunatic should be at liberty, in his name, to renew the lease upon the terms specified in the report, and that he should apply money in his hands, and to arise from the sale of stock belonging to the lunatic, for the payment of the fines and fees of the renewal; and that the costs of obtaining the renewal, and of the petition, and order of reference, should be taxed, and paid out of the lunatic's estate (*r*).

Whenever the patron of any benefice, or the lord of any manor, whose consent or concurrence is required in leases of lands belonging to ecclesiastical benefices, or in leases for long terms of years by ecclesiastical corporations, shall be an idiot or lunatic, his committee may execute the instrument by which such consent or concurrence is to be testified (*s*).

Leases of lunatics' estates in Ireland.—The powers and authorities given by stat. 11 Geo. 4 & 1 Wm. 4, c. 65, to the Lord Chancellor, intrusted by the sign manual with lunatics, may be exercised in like manner by and are given to the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all land and stock in Ireland, but not further or otherwise (*t*).

And the powers and authorities given by that act to the Lord Chancellor of Ireland, intrusted as aforesaid, may be exercised in like manner by and are thereby given to the Lord Keeper, or commissioners of the great seal of Ireland for the time being, intrusted as aforesaid (*v*).

The Irish statute 11 Anne, c. 3, authorized the renewal of leases for one or more life or lives of lands and hereditaments in Ireland, with agreements for renewing the same on payment

(*q*) *In re* The Earl of Portsmouth,
23 July, 1827.

Vict. c. 108, s. 24; see 1 & 2 Vict.
c. 106, s. 127.

(*r*) *In re* Birch, 19 Dec. 1827.

(*t*) 11 Geo. 4, and 1 Wm. 4, c. 65,

(*s*) 5 & 6 Vict. c. 27, s. 7; 5 & 6

s. 40.

(*v*) *Ib.* s. 42.

of some fine certain, on the death of any life or lives in such leases mentioned, by adding such one or more new life or lives as the lessee or lessees shall nominate, and it enacted, that, in all cases where the person or persons who by covenant are obliged to make such renewals shall be disabled to renew by reason of being *non compos mentis*, it shall be lawful for the Lord Chancellor of Ireland, upon petition, upon payment of the fine for the use of the persons entitled to the same, and upon the lessee's performing all the covenants on his part previous to such renewal, to order such renewal to be made by one of the Masters of the Court of Chancery to be nominated by the Lord Chancellor, and such Master shall execute such deeds of renewal, which, when so executed by him, (counterparts thereof being duly perfected by the lessees for the benefit of the persons having the reversion of the hereditaments comprised in such deeds), shall be as effectual as if the person under such disability had not been disabled and had executed the same. This act does not contain any provision for the renewal of leases for terms of years.

By the statute 11 Geo. 4 & 1 Wm. 4, c. 65, s. 22, it is enacted, that the clauses and provisions contained in the act of the 11 Anne, c. 3, shall continue in force in the same manner as if they had been re-enacted; and none of the other provisions contained in the former act, for authorizing any surrenders to be accepted, or any new lease to be made or executed, for or on behalf of any person who, in pursuance of any covenant or agreement for renewal in any lease contained or to be contained, ought to make such new lease or leases, shall extend to land in *Ireland*.

The stat. 11 Anne, c. 5, and the 22nd section 11 Geo. 4 & 1 Wm. 4, c. 65, are now repealed, except as to proceedings under it commenced before the 30th July, 1835, and the 16th and 19th sections of the latter act (*u*) are now extended to *Ireland* (*v*).

By the Irish statute 10 Geo. 1, c. 5, it is enacted, that it shall be lawful for all ecclesiastical dignitaries, parsons, rectors,

(*u*) See *ante*, pp. 447, 448.

(*v*) 5 & 6 Wm. 4, c. 17.

vicars, and all bodies politic and corporate, and *all other persons* who are tenants for life, with an immediate remainder to his or her first and every other son in tail male, and for every tenant in dower or by the curtesy, with the consent of the persons seised in remainder of an estate of inheritance; or in case of *idiocy* or *lunacy* of such person seised in reversion or remainder, then with the consent of the committee of such idiot or lunatic, with the approbation of the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal of Ireland, in such cases of idiocy and lunacy, by indentures under their hands and seals, to grant leases not exceeding the term of thirty-one years, of all mines and minerals whatsoever, which shall be found within their respective manors, lands, and tenements, upon certain conditions therein expressed.

By the third section of the same act, after reciting that it might happen that such tenants for life, tenants in dower or by the curtesy, might be idiots or lunatics, it is enacted, that in all such cases it shall be lawful for all committees of idiots and lunatics, with the consent of the Lord Chancellor of Ireland, or Lord Keeper, or Commissioners of the Great Seal for the time being, to grant leases not exceeding the term of thirty-one years of all mines and minerals to be found on the manors, lands and tenements of such idiots and lunatics, upon the conditions thereinbefore expressed.

By the Irish statute 15 Geo. 2, c. 10, the provisions of the last-mentioned act are extended to coal mines in Ireland, of which, by statute 23 Geo. 2, c. 9, the term of forty-one years may be granted.

The Masters of the Court of Chancery in Ireland are empowered to grant renewals of leases for years or lives, where the parties are out of the jurisdiction, or not amenable to the process of the Court, 1 & 2 Vict. c. 62.

Apportionment of rent.—A lunatic's estates, of which he was seised in fee, were let by parol agreement from year to year, the rents payable half-yearly at Lady-day and Michaelmas. The lunatic died in June; it was held that the proportion of the half-year's rents from the Lady-day preceding the lunatic's

death, up to the time of his death, was not to be apportioned under the statute 4 & 5 Wm. 4, c. 22 (*w*).

It was held under 11 Geo. 2, c. 19, s. 15 (*x*), that upon the death of a tenant for life with power of granting leases, who had let part of the estate by a parol agreement, reserving rent half-yearly, such rent was apportionable between the administrator and the remainder-man, who was a lunatic (*y*).

(*w*) *In re Markby*, 4 My. & Cr. 484; 3 Jur. 767; see *Shelford's Real Prop. Statutes*, 500—512, 4th ed.

(*x*) It was held, that the committee of a lunatic tenant for life is not an assignee within the meaning of the first or second sections of the Irish statute 23 & 24 Geo. 3, c. 46, which enables the executors, administrators, or assigns of a tenant for life to recover by action, or by distress, the whole, or a proportion of the rent due on his death. And therefore, where a lease of an estate of which a lunatic was tenant for life, had been granted by a Master in Chancery in Ireland un-

der the order of the Court, reserving rent half-yearly, and the lunatic died before the day appointed for payment of a half-year's rent, it was held that his committee was a trespasser in entering and distraining for so much of the last half-year's rent as was due at the lunatic's death, notwithstanding an order of the Lord Chancellor, made after the lunatic's death, authorizing the committee to enforce the payment of the rents in arrear due from the lunatic's tenants; *Persse v. Persse and Another*, 1 Alcock & Napier's K. B. Ir. Rep. 35.

(*y*) *Ex parte Smyth, In re Smyth*, 1 Swanst. 337.



SECTION II.

OF THE SALE AND MORTGAGE OF THE ESTATES OF LUNATICS,
FOR THE PAYMENT OF THEIR DEBTS AND OTHER PURPOSES.

- 1.—*Of provision for payment of debts.*
 - 2.—*The statutes authorizing sales and mortgages.*
 - 3.—*The mode to be pursued for effecting sales or mortgages.*
 - 4.—*Private acts of Parliament respecting lunatics' estates.*
-

1. *Of provision for payment of debts.*

BEFORE the passing of the statute 43 Geo. 3, c. 75, the Lord Chancellor had no power, in lunacy, to order the real estates of a *non compos* to be sold or charged for payment of his debts, or for any other purpose.

Thus, where a petition was presented by the creditors of a lunatic, praying, that the Master's report of the debts due to the petitioners might be confirmed; and that they might be paid out of the lunatic's personal and leasehold estates; and the committee ordered to sell so much of the personal and leasehold estates as would be sufficient for that purpose; and if the produce should be insufficient, that the committee might be directed to apply the rents and profits of the real estate from time to time. The committee consented to the proposal for sale. Lord *Eldon*, C., said, "such cases were very lamentable, and ought to be provided for by an act of Parliament. But the question was, whether he had any power of selling the leasehold estate. He had no objection, if any purchaser would take it; *but his order would not make him a title.* As to the rest of the application, his Lordship said, he never remembered an instance, upon the report of debts, of stripping the lunatic, and putting him in the situation of absolute want; and that he had known the Court of Chancery throw difficulties in the way of creditors to prevent that." The personal estate was

ordered to be applied as far as it would go, and the rents of the leasehold estates, in payment of the debts; and if any purchaser would take the leasehold estate, they were to apply again (a).

Where the lunatic was entitled to one-third part of a leasehold house and stables, situated in Piccadilly, which had been originally granted for a long term of years, of which fifty years were unexpired, and the party entitled to the remaining two-third parts, had contracted to sell the whole of the premises—an application was made for an order of reference to the Master, to inquire and ascertain whether it was for the benefit of the lunatic's estate, that the leasehold house and stables should be sold and disposed of, and whether the contract entered into was a beneficial one, to which the lunatic's next of kin consented. The Lord Chancellor observed, that he had certainly no power to compel a purchaser of the lunatic's estates to accept the title thereto; but if the purchaser was willing to take the title, his Lordship had a certain power and control over the estate as long as the party remained a lunatic, but no longer; and he could make the order for a reference to the Master, to ascertain whether the contract for sale was beneficial to the lunatic's estate: And it was directed that on production of an affidavit, stating the consent of the purchaser to accept the title to the estate, the reference should go to the Master (b).

And in another case, a lunatic was entitled under a will to real estates in fee simple, subject to debts by mortgage, bond, and simple contract. The bond-creditors having exhausted the personal estate in part payment of their demands, a petition was preferred, (to which the heir-at-law and next of kin consented), praying that a specific estate might be sold for payment of the debts. Lord *Rosslyn*, C., held, that, although very desirable, he could not make a decree in lunacy, but it must be by bill (c).

In one case, where a testator, by his will, devised to his wife

(a) *Ex parte Dikes*, 8 Ves. 79.

(c) *Ex parte Smith*, 5 Ves. 556.

(b) *In re Halford*, 1 Jur. 524.

all his real and personal estate charged with the payment of his debts, and appointed her executrix of his will, and a bill was filed by his creditors against his widow, who had proved his will, taken possession of his personal estate, entered on the real, and sold part of it, and then *became insane*, and the testator's heir-at-law was in the West Indies—The Lord Chancellor declared that the will ought to be established, and directed the usual accounts, and a sale of the real estate, in case the personal should be insufficient to pay the debts (*d*).

The leading principle of considering, in the administration of the jurisdiction in lunacy, the comforts of the lunatic has been carried so far, that, although it never can be the wish of the Court that creditors should be defrauded of their just demands, an order will not be made for payment of the debts of a lunatic out of his funds in Court, unless it clearly appear that a sufficient maintenance will remain, or is securely provided for the lunatic.

Thus, where a petition was presented by the wife and committee of the person of a lunatic, praying that his specialty and simple contract debts might be paid out of a fund of 5000*l.* in the Bank, upon the suggestion that the creditors would arrest him. Lord *Eldon*, C., said, “that he had no authority to pay the debts of the lunatic, unless it was for the accommodation of his estate; he could not pay his debts, and leave him destitute of any provision. If any one would undertake to maintain him, the undertaking must be very precise to pay a specific sum for the maintenance of the lunatic while he remained in that condition. There was no instance of paying the debts of a lunatic, without reserving a sufficient maintenance for him; as the creditors cannot touch these funds. They may put him in gaol, where the Chancellor could maintain him, and they might sequester his living. These orders are made for the accommodation, not of the creditors, but of the lunatic; and on its being shewn that it is for his accommodation, the Court will order his debts to be paid” (*e*).

(*d*) *Williams v. Whinyates*, 2 Br. C. C. 399; cited in 1 Sch. & Lef.

(*e*) *Ex parte Hastings*, 14 Ves. 182.

Certain creditors of the lunatic prayed the payment of costs which had been taxed, and that the residue of the lunatic's estate, after such payment, might be paid into the Bank; and for a reference to ascertain what ought to be allowed for the maintenance of the lunatic and his family, and what parts of his estate ought to be applied in discharge of his debts. A reference had been previously made to the Master, who had reported that the lunatic had two daughters, who were his next of kin and coheiresses-at-law. The lunatic's wife had been appointed committee of his person, and a person named Johnson committee of his estate. The estate of the lunatic consisted, according to the Master's report, of debts due to him amounting to 1886*l.*, and the debts due from his estates amounted to upwards of 1900*l.*, so that the lunatic's estate was clearly insufficient for the payment of his debts. It was stated for the petitioners, that according to the cases (*e*), the Court would not, in any state of circumstances, reduce a lunatic to a state of absolute want. Here the surplus of the lunatic's estate, after payment of the costs, would be 960*l.* only, and the two daughters had been placed in almshouses. The Lord Chancellor said, the rule was well understood, that the Lord Chancellor would not, in favour of creditors, place the lunatic in a state of want; and directed a reference to the Master, under the circumstances to ascertain, what ought to be allowed for the maintenance of the lunatic, regard being had to the state of the funds, but declined directing any inquiry as to payment of debts, there being no fund at present applicable to that purpose (*f*). It should be observed, however, that the person of a lunatic can only be protected by providing for the payment of his debts, for any creditor of such a party might before the stat. 1 & 2 Vict. c. 110, arrest him, and since that act other proceedings may be taken. (*g*).

The Great Seal acquires no authority to displace the right of a creditor to enforce payment of his debt, because his debtor is a lunatic, except when the party, or the agent himself,

(*e*) *Ante*, pp. 457, 458.

(*f*) *In re Railton*, 1 Jur. 574.

(*g*) *Ex parte Hall, In re Legard*,
Jac. R. 161; see *post*, Chap. ix. s. 2.

attributes that jurisdiction by intervening in the matter of the lunacy (*g*).

Where a creditor had obtained judgment for his debt against a lunatic, it was held that he might file a bill to set aside a voluntary settlement executed by him (*h*).

Where a lunatic was possessed of leasehold property, the annual income of which was 245*l.*, the Lord Chancellor, after directing the annual sum of 150*l.* to be set apart for the maintenance of the lunatic, ordered that the residue of the rents and profits of the estates should be applied by the committee of the estate in payment of the debts reported due to the several creditors of the lunatic, whose names were mentioned in the schedule, rateably and in equal proportions according to the respective amounts thereof, until the same should be satisfied (*i*).

References are frequently directed to the Master to take an account of the debts of a *non compos*, and to certify in what manner it will be proper to discharge them, and sometimes the Master is directed to advertise for the creditors of a lunatic. Thus, it was referred to the Master to inquire and certify whether there were any and what debts due and owing by the lunatic, and to whom, and out of what funds the same (if any) ought to be paid; and, for the better taking such account, the Master was to cause advertisements to be published in the *London Gazette*, and such other public newspapers as he shall think fit, for the creditors of the said lunatic to come in before him and prove their debts, within a time to be limited in the latter of such advertisements; and in default thereof, they were to be excluded the benefit of the order (*k*). In another case, the Master was directed to inquire whether there were any disposable funds of the lunatic, out of which a particular debt could be paid, regard being had to the maintenance of the lunatic (*l*).

(*g*) *In re Ball*, 2 Molloy, 145.

(*h*) *Colman v. Croker*, 1 Ves. jun.

160.

(*i*) *In re Deller*, 22 Dec. 1821.

(*k*) *In re Davidson*, 11 Jan. 1827;

In re Kendall, 3 Aug. 1820.

(*l*) *In re Buckle*, 23 April, 1827.

Leave was given to the committees of a lunatic's estate to pay certain debts alleged to be due from the lunatic to solicitors, claiming a lien on title deeds in their possession belonging to the lunatic's real estate, without prejudice to the subsequent investigation and taxation of the claimant's accounts and bills of costs (*m*).

The creditors are not bound to come in under a reference, as to the lunatic's debts, as they would be under a decree, the object of inquiry being merely the benefit of the *non compos* and his estate (*n*); but provision will be made for the payment of the debts of such only of the creditors as bring in their claims under the order, it is of course the duty of the committee and of the Master to ascertain that such demands are just. In case the Master disallow the claims of any creditors, they may except to his report, if made in a cause, but if made in a lunacy only, a petition may be presented for allowing such claim, or to have the Master's report reviewed. Where a person had, previously to his having been found a lunatic, granted an annuity charged on real estate and money in the funds, and the Master was directed to take an account of the debts owing by the lunatic, and the annuitant claimed several sums for insurance of the life of the lunatic, and interest on those sums, which were disallowed by the Master; on exceptions being taken to the report, it was decided, that no allowance would be made for the premiums for insuring the life, either in an action, or by the Court of Chancery, the insurance being part of the speculation (*o*). In another case, the claims of two creditors of a lunatic having been disallowed by the Master, on their taking objections, he was ordered to review his report (*p*). In case the Master admit only part of a claim, the creditor will probably not be allowed his costs, except upon undertaking not to bring an action in respect of what the Master has disallowed. The Accountant-General may be directed to pay the creditors of a

(*m*) *In re Davies*, 7 Jur. 589.

(*o*) *Ex parte Shaw*, 5 Ves. 620.

(*n*) 12 Ves. 385; see *Rocke v. Cooke*, 1 Coll. C. C. 477; Dan. Ch.

(*p*) *In re Cranmer*, Aug. 1807; 1 Coll. on Lun. 379.

Pr. pp. 1156—1158, 2nd. ed.

non compos out of the cash in his hands in the matter of the lunacy (*q*).

Costs incurred under employment in a lunacy.—A claim arising in the course of an employment under a lunacy, and for the purpose of carrying into effect the directions of the Court in that lunacy, unless there be some special agreement to the contrary, is properly the subject of inquiry before the Master. An order was made to restrain an action brought by an auctioneer, against the solicitor in the lunacy, for the amount of his bill for appraising and selling property belonging to the lunatic, such sale having been made under the authority of the Court, and the auctioneer having acted under the instructions of the solicitor, and with the sanction of the Master, before whom he had first carried in his claim; and a reference was directed for the purpose of ascertaining what would be a proper sum to be allowed to the auctioneer on that account (*r*).

Every person who intermeddles in the matter of a lunatic, is intended to be interested for his advantage. Therefore, where a solicitor who had acted in some of the proceedings under a commission of lunacy, afterwards acted as attorney for a creditor of the lunatic, and issued an execution and took his household furniture, the Lord Chancellor of Ireland restrained the sale, the committee entering into security for the value of the goods, to be paid by instalments, out of the savings of the income (*s*). An attorney concerned in the matter of a lunacy, and as agent for an adverse party, is bound to prefer his duty to the Court in the former capacity (*t*).

The extra costs occasioned by a mistake of the Master were, in a recent case, allowed to a creditor proving his debt against a lunatic's estate (*u*). After the death of a *non compos*, an order may be made in the lunacy for payment of his debts, upon a petition preferred in his lifetime (*v*). But such an order cannot

(*q*) 1 Coll. on Lun. 381.

(*r*) *In re Weaver*, 2 My. & Cr.

441.

(*s*) *In re Ball*, 2 Molloy, 145.

(*t*) *Ibid.* 146; *ante*, p. 242.

(*u*) *In re Buckle*, 1 Russ. & Mylne, 360.

(*v*) *Ex parte M'Dougal*, 12 Ves. 384; see *ante*, pp. 23, 24.

be made in lunacy upon a petition preferred after the death of a *non compos* (*w*). The creditors in such a case may file a bill against his personal representatives for taking an account of their debts, and for the payment of them out of the assets of the lunatic (*x*).

A person who was a lunatic, but had not been found to be so by inquisition, died seised of a small freehold estate, but not possessed of any personal property. His stepfather had received the rents of the estate, and had expended more than the amount of them in maintaining the lunatic; he also paid the lunatic's funeral expenses. It was held, that he was not entitled under 3 & 4 Wm. 4, c. 104, to be paid either the surplus expenditure, or the amount of the funeral expenses out of the lunatic's freehold estate, (*Carter v. Beard*, 10 Sim. 7). See *Rogers v. Price*, 3 Y. & Jer. 28, where it was held, that an executor, who has assets sufficient for the purpose, is liable, upon an implied promise, to pay for a funeral suitable to the degree of his testator, furnished by the directions of a third person. In *Wentworth v. Tubb*, (1 Y. & Coll. N. C. 171, 6 Jur. 980), it was decided that in the case of necessities supplied to a lunatic, the law raises a contract by implication on the part of the lunatic, under which the amount of such necessities may become payable as a debt out of his real or personal assets, on a bill filed for the administration of those assets (*y*).

The law will raise an implied contract or debt against the lunatic or his estate, for monies expended for the necessary protection of his person and estate (*z*).

Under a commission of lunacy, A. B. was, upon inquisition, found lunatic, and the verdict was confirmed upon the trial of a traverse. Before the costs had been ordered to be raised, A. B. died:—It was held, on a creditor's bill, to which the lunatic's heir-at-law demurred, that, under 3 & 4 Wm. 4, c. 104,

(*w*) *Pochin's case*, 12 Ves. 385.

(*x*) *Wigg v. Tiler*, 2 Dick. 552.

(*y*) See *Manby v. Scott*, 1 Sid. 112; *Baxter v. Earl of Portsmouth*, 7 D. & R. 614; 5 B. & C. 170;

Brown v. Joddrell, 3 Car. & P. 30; *Mood. & M.* 105; *Dane v. Lady Kirkwall*, 8 Car. & P. 679, *post*.

(*z*) *Williams v. Wentworth*, 5 Beav. 325; *ante*, p. 161.

the real estate of the lunatic was liable for the costs of the proceedings (*a*).

In reference to the liability of a lunatic's estate to money paid for supplying him with necessaries, Lord *Brougham*, C., said, "It is common for the Lord Chancellor to confirm a Master's report, making allowances to A. B. for monies paid for the use of the lunatic—to C. D. for having maintained the lunatic—to E. F. for having clothed the lunatic. Upon what ground are all these allowances made? Not from kindness, not from charity, not for the convenience of the parties, but because they are debts: because in the eye of the Court, be it a Court of law or a Court of equity, or the Chancellor sitting in lunacy, they are valid debts incurred by the insane person, and are discharged by the justice of the Court. It is certainly done not for the interest of the lunatic, because that would be better consulted by rejecting the claim, and by saying—"Why did you throw away your money or your care on an insane person, who had not the power of paying you, or binding himself to pay you, and who could give no acknowledgment for it?" (*b*).

In 1823, an action was brought upon a promissory note, and the debtor was arrested. Soon afterwards the debtor was declared a lunatic; and in 1825, he, by his committees, filed a bill to restrain the action. In July, 1825, an arrangement was made, and carried into execution by an order of the Court of Chancery, whereby the action was stayed, and the creditor agreed to establish, and did proceed to establish, his debt under the lunacy. In 1843, however, and before the Master acting in the lunacy, had made any report as to the creditor's claim, the lunatic died. The creditor then filed his bill against the lunatic's executors:—It was held, upon demurrer, the Court

(*a*) *Ib.* Payment of the costs of a commission of lunacy out of the lunatic's real estates, which were of considerable value, the lunatic having died since the return of the inquisition, leaving no personal estate, was refused—Lord *Cottenham*,

C. being of opinion that the act 11 Geo. 4 & 1 Wm. 4, c. 65, s. 28, did not apply to such a case. *In re Tubb*, 1 Jur. 653; see, *ante*, p. 158, *In re Pinks*.

(*b*) *Howard v. Digby*, 2 Cl. & Fin. 663.

having no judicial knowledge of the effect of the death of the lunatic upon the proceedings in the lunacy, that the claim of the plaintiff was not barred by lapse of time (*d*).

If a trustee is sued for an account in the Court of Chancery, and it shall appear that he has properly expended sums of money for the protection and safety, or, for the maintenance and support, of his *cestui que trust* at a time when the latter was incapable of taking care of himself, although not found a lunatic by inquisition, the Court will allow him credit for such sums of money. And where a party, having been guilty of violent conduct, was, upon medical certificates, removed from prison, where he had been committed by a magistrate for violence, to an asylum, in which he was detained five years, and afterwards having escaped from the asylum, was found by a jury of sound mind—an executor who had monies belonging to him in his hands, out of which he maintained him during his confinement, was held entitled, in a suit for the executorship accounts, to an inquiry whether the monies so expended by him for his protection and maintenance, and also the expenses of a commission of lunacy, were properly expended and incurred (*e*).

2. *The statutes authorizing sales and mortgages.*

By the statute 43 Geo. 3, c. 75, the Lord Chancellor of England and Ireland, respectively, intrusted by the King's sign manual with the care and commitment of the persons and estates of the persons found lunatic or of unsound mind, and incapable of managing their affairs, by inquisition, when in England or Ireland, respectively, might order the freehold and leasehold estates of such persons respectively, to be sold or charged by way of mortgage or otherwise, for the purpose of raising such sums of money as should be necessary for payment of the debts, and for performing the contracts of any such persons respectively, and the costs attending such sale, mortgage, or incumbrance respectively. The surplus money

(*d*) *Rock v. Cooke*, 1 Coll. C. C. 477.

(*e*) *Duncombe v. Nelson*, 10 Jur. 399.

was to be applied in the same manner as the estate sold would have been applied if the act had not been made (*f*). And that act did not subject any part of the estates of a lunatic to the debts or demands of his creditors, otherwise than as the same were then liable, but only authorized orders in such cases as were thereinbefore mentioned, when the same should be deemed for the benefit of such person so found lunatic, &c. (*g*).

Lord *Eldon*, C., intimated, that in the exercise of the power given him by that statute, on being satisfied that the maintenance of the lunatic would be better provided for, and his advantage promoted, by disposing of a real estate, inconvenient and ill-conditioned, and that it would be for his benefit so to pay the debts, and keep together the personal estate, he should have had no difficulty in granting an application for selling part of the real estate; although the effect of such an order would have been to change the right of succession (*h*).

As the act 43 Geo. 3, c. 75, did not authorize the sale of the copyhold lands of a lunatic, such lands not being mentioned as subjects of sale (*i*); such of the powers and provisions of that act as authorized the sale or mortgage of estates belonging to lunatics, were extended to such estates as were held by *ancient demesne*, or by *copy* or *Court roll* (*k*).

The powers and provisions of the 43 Geo. 3, c. 75, and the 59 Geo. 3, c. 80, were afterwards extended, for the purposes of raising money for payment of the debts and engagements of lunatics, the discharge of any incumbrances on their estates, the costs of applying for and obtaining the commission of lunacy, and in opposition thereto, and all proceedings under the same commission, or incurred by any persons under the order of the Lord Chancellor, and the costs of such sales, mortgages, charges, and incumbrances, and other dispositions as such Lord Chancellor should direct (*l*).

In a case, where a lunatic was tenant for life of large estates,

(*f*) 43 Geo. 3, c. 75, s. 2.

(*g*) *Id.* s. 6.

(*h*) *Ex parte Phillips*, 19 Ves.

124.

(*i*) *Ex parte Birch, In re Addy*,

3 Swanst. 98.

(*k*) 59 Geo. 3, c. 80.

(*l*) 9 Geo. 4, c. 78, ss. 1, 2.

an order was made for raising a sum of money for payment of his debts by the sale of an annuity, to be charged upon the life estate of the lunatic in certain manors and estates, with a right on his part to repurchase such annuity, or any proportionate part thereof, in sums not under a given amount, whenever there should be funds of the lunatic ready to be so applied (*m*). And it was ordered, as the lunatic was tenant for life only of the estates to be charged, that the Master, in settling the grant of such annuity, should not subject the lunatic, or his representatives, to the payment of any proportional part of the annuity to be granted, subsequent to the last quarter day appointed for payment of it immediately preceding his death, but, in lieu thereof, should add such further sum to the annuity proposed to be granted, as he might find to be a fair equivalent for such proportional part (*n*).

The statutes 43 Geo. 3, c. 75, the 59 Geo. 3, c. 80, and the 9 Geo. 4, c. 78, are repealed (*o*).

Estates of lunatics may be sold or mortgaged.—The Lord Chancellor, intrusted with the care and commitment of the custody of the persons and estates of lunatics, may order any land, of or to which any person *being lunatic* (*p*) shall be seised or possessed or entitled, to be sold, or charged and incumbered by way of mortgage, or otherwise disposed of, as shall be deemed most expedient for the purpose of raising money for payment of the debts or engagements of such lunatic, the discharge of any incumbrances on his estates, the costs of applying for and obtaining the commission of lunacy and in opposition thereto, and all proceedings under the said commission, and the costs of such sales, mortgages, charges, and incumbrances, and other dispositions, or for any of such purposes as aforesaid, as such Lord Chancellor, intrusted as aforesaid, shall respectively direct; and that the monies arising from any such sale, mortgage, charge, incumbrance, or other disposition, may be paid, laid out, and applied in payment of the debts and engagements of such lunatic, the discharge of any incumbrances on his estates,

(*m*) *In re* The Earl of Portsmouth,
31 March, 1828.

(*n*) *Id.* 14 Aug. 1828.

(*o*) 11 Geo. 4 & 1 Wm. 4, c. 65,
s. 1.

(*p*) See *ante*, p. 439, notes (*g*) (*h*).

the costs of applying for and obtaining the commission of lunacy and in opposition thereto, and all proceedings under the same commission, or incurred under the order of such Lord Chancellor, intrusted as aforesaid, and the costs of such sales, mortgages, charges and incumbrances, and other dispositions, in such manner as the said Lord Chancellor, intrusted as aforesaid, shall direct; and he may direct the committee of the estate of such person to execute in the place of such person respectively, conveyances of the estates so to be sold, mortgaged, incumbered or disposed of, and to do all such acts as shall be necessary to effectuate the same, in such manner as such Lord Chancellor, intrusted as aforesaid, shall direct (*q*).

Where the lunatic, who had no issue, was seised of an estate tail in possession, with the immediate reversion to himself in fee, and the land had been sold under the statute 11 Geo. 4 and 1 Wm. 4, c. 65, s. 28, for payment of his debts, an order was made on the committee to suffer a recovery on behalf of the lunatic, in order to complete the title to a purchaser. Lord *Brougham*, C., said: "in this case, the lunatic is tenant in tail of the property in question, with the immediate reversion in himself in fee. If there had been any intermediate remainders, the estate would not have been such as comes within the description of "land of or to which any person being lunatic shall be seised, or possessed, or entitled;" and I should have held, without any doubt, that the act only gives the power of selling or charging the lunatic's own interest, and not of doing any thing which would defeat the estates of others, although the lunatic, if of sound mind, might have defeated those estates. It is plain enough, upon the reason of the thing, that we must impose this restriction upon the very great generality of the expressions employed in the 28th section, and interpreted by the second. But the 29th section, respecting the application of the surplus, leaves it still more clear; for none of the terms used to describe the persons whose interests in the surplus are saved by that section, are at all applicable to remainder-men (*r*).

(*q*) 11 Geo. 4 & 1 Wm. 4, c. 65, s. 28.

—152; see *In re Skerrett*, 2 Dru. & War. 585, *ante*, p. 334.

(*r*) *In re Brand*, 1 My. & K. 150

But in a case where it appeared that an estate was limited to the use of trustees during the life of a woman who was found a lunatic by inquisition, upon trust to pay the rents to her for her separate use during her life, with remainder to her eldest son (who had also been found a lunatic by inquisition) in tail, with divers remainders over, and an application was made by the committees of the two lunatics for a sale of part of the settled estate, for discharging incumbrances on it, and that the committees of the lunatics might be at liberty to do all such acts and deeds as might be necessary for giving effect to such sale and destroying the estate tail of the son; the Lord Chancellor refused to make the order, on account of there being remainders over after the estate tail of the son (*s*).

Surplus monies to be of the same nature as estates.—On any disposition to be made under the act 11 Geo. 4 and 1 Wm. 4, c. 65, the person whose estate shall be sold, mortgaged, charged, incumbered, or otherwise disposed of, and his heirs, next of kin, devisees, legatees, executors, administrators, and assigns, shall have such and the like interest in the surplus which shall remain, after answering the purposes aforesaid, of the money so raised, as he or they would have had in the estate by the sale or mortgage or other disposition of which such monies shall be raised, if no such sale or mortgage or other disposition had been made; and such monies shall be of the same *nature and character* as the estate so sold or mortgaged or disposed of; and the Lord Chancellor, intrusted as aforesaid, may direct such acts and deeds to be done and executed, as shall *be necessary for carrying the aforesaid objects into effect*, and for the due application of such surplus monies (*t*).

Act not to subject lunatics' estates to debts.—Nothing in the act shall extend to subject any part of the estates of any person being lunatic, to the debts or demands of his creditors, otherwise than as the same were then subject by due course of law,

(*s*) *In re S. Penny and R. B. Penny*, 9 Aug. 1833.

(*t*) 11 Geo. 4 & 1 Wm. 4, c. 65, s. 29. The surplus money arising from the sale or mortgage of real

estates under the stat. 2 & 3 Vict. c. 60, is to descend in the same manner as the estates sold or mortgaged would have done. 2 & 3 Vict. c. 60, s. 2.

but only to authorize the Lord Chancellor, intrusted as aforesaid, to make order in such cases as were thereinbefore mentioned, when the same *shall be deemed just and reasonable, or for the benefit or advantage of such lunatic* (u).

By whom powers may be exercised.—The powers and authorities given by that act to the Lord Chancellor of Great Britain, intrusted as aforesaid, extend to all land and stock within any of the dominions, plantations, and colonies belonging to his Majesty (except Scotland and Ireland) (v). And it is declared, that the powers and authorities given by that act to the Lord Chancellor of Great Britain, intrusted as aforesaid, may be exercised in like manner by, and are thereby given to, the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all land and stock in Ireland (w).

The powers conferred on the Lord Chancellor, by the preceding statutes, are very extensive; and to obtain orders for the sale or mortgage of the estates of lunatics, particularly the former—the committee making the application, may probably be required to shew a strong case to justify the exercise of such powers; for example, that the property is so circumstanced, as to locality or otherwise, that it cannot be beneficially enjoyed by the lunatic, but may be disposed of to advantage, (as in cases where a trade or business has been carried on); that there are incumbrances upon the estates of, or debts due from, the lunatic for the payment of which it is necessary to provide a fund, (there being no other available for those purposes); or that the income of the lunatic's estate will be so increased by converting it into personalty as to afford an ample fund, where before there was a deficient one, for his maintenance, by investing the produce of the sale in some other mode, as in the purchase of an annuity, or in the funds. In all applications by the committee for altering the estate of the lunatic, it ought to be considered how far the interest of the latter will be promoted, and no such application ought to be granted, unless the committee can shew satisfactory reasons for

(u) 11 Geo. 4 & 1 Wm. 4, c. 65,
s. 30.

(v) Id. s. 39.

(w) Id. s. 40; see *ante*, p. 452.

exerting the extraordinary powers upon this subject now given by the Legislature to the Lord Chancellor.

The committee of a lunatic cannot incumber his estate without the special order of the Lord Chancellor. Where a lunatic before he became such had mortgaged his estate, and the committee upon a transfer of the mortgage, borrowed a further sum—the Court in a suit for an account against the committee, declared that the security should stand only for the original sum (*x*).

3. *The mode to be pursued for effecting sales and mortgages.*

When the committee of the estate of a lunatic is desirous of raising money on a mortgage of the lunatic's estate, the application must be made on petition to the Lord Chancellor (previous notice of it having been given to the heir-at-law and next of kin of the lunatic), setting out the particular debts or incumbrances for the payment of which it is necessary or expedient to provide; if the application be granted, the Masters in Lunacy will be directed to make the necessary inquiries, and, in some cases, the reference is to inquire whether the particular debt mentioned in the petition is due from the lunatic within the meaning of the act authorizing the committee to mortgage (*y*). If the Master's report should be confirmed, an order will be made that the committee of the estate may be at liberty, in the name and in the place of the lunatic, to execute the mortgage for securing the principal sum and interest mentioned in the report; and such directions as to the application of the mortgage-money will be given as the nature of the case may require, and the costs attending such mortgage will be ordered to be taxed, and paid out of the lunatic's estate (*z*).

References on this subject have been made in more general terms: thus, it was referred to the Master, to inquire whether

(*x*) *Foster v. Merchant*, 1 Vern. 262.

If the heir of a mortgagor, of what age soever, be an idiot, any man may tender the mortgage-money for him in respect of his absolute disability, and the law in

this case is grounded upon charity, and so in like cases. Co. Litt. 206 (b).

(*y*) 11 Geo. 4 & 1 Wm. 4, c. 65.

(*z*) *In re Buckle*, 19 December, 1827.

it would be proper that any and what parts of the real estates of the lunatic should be sold or mortgaged for the purpose of raising sums of money mentioned in the petition, and found by the Master's former report to be due from the lunatic (*a*). —It was held, that the last reference could not be proceeded in after the death of the lunatic (*b*).

In order to obtain a sale of the lunatic's real estate, a petition must be presented by the committees of his estate (of which notice must be given to the heir-at-law and next of kin of the lunatic), and if the Lord Chancellor grant the application, it will be referred to the Masters in Lunacy, to inquire whether it will be proper to sell any part of the lunatic's estate;—upon inquiry before the Masters, evidence shewing the necessity for such sale, a state of facts, and a valuation of the property, should be laid before him, who will report as to the propriety of the proposed sale, and, if he find that it will be proper to sell any part of the estate, an order for confirming his report must be obtained on the petition of the committees, in which it will be further ordered, that they shall be at liberty to proceed to a sale of the estates mentioned in the report, and to apply the money to arise therefrom as shall be thereby directed, being for purposes authorized by the act of Parliament (*c*).

On the confirmation of the Master's report, approving a sale, an order will be made, that the particular estate in question may be sold by public auction, with the approbation of the Master, to the best purchasers who can be obtained, subject to his allowance (*d*): and he will be directed to settle a reserved bidding for the estates directed to be sold, in order to prevent the same being sold for an inadequate consideration, and to appoint persons to bid for the same accordingly (*e*). When

(*a*) *In re Holmes*, 14 Jan. 1831.

(*b*) *Id.* 19 Aug. 1831; *in re Loft*, 8 Jur. 206; *ante*, p. 25.

(*c*) 11 Geo. 4 & 1 Wm. 4, c. 65, s. 28; *ante*, p. 467.

(*d*) *In re Walter*, 6 Aug. 1826. The sales of estates in lunacy are

for the most part conducted in the same way as those under a decree of the Court of Chancery. As to which, see Sugd. V. & P. c. 2; Dan. Ch. Pr. 1193, 2nd ed.

(*e*) *In re Walter*, 6 Aug. 1825.

the Master has reported that a particular person has become the purchaser of the estate directed to be sold, or any part thereof, the purchase may be confirmed on the petition either of the committee, or of the purchaser of the estate, whereupon it will be ordered that the latter pay the amount of his purchase-money into the Bank of England, with the privity of the Accountant-General of the Court of Chancery (to be placed to such account as the case may require), and upon payment thereof be let into possession of the estate purchased, and that a proper conveyance of such estate be executed by the committees of the estate to the purchaser at his own expense. The conveyances of the estates of lunatics are generally directed to be settled by the Master, *in case the parties differ about the same*; and the costs incurred by the committees and next of kin of the lunatic about the sale, are usually directed to be taxed and paid out of his estate.

In a case, where the Master had reported that considerable sums of money were due from the estate of the lunatic for costs incurred in the lunacy, and in other legal proceedings arising thereout, and that there were no available funds for payment of them, and that it would be proper to provide for their payment by sale of part of the lunatic's real estate, and that the remainder of the lunatic's property, after the proposed sale, would produce an annual sum nearly equal in amount to the sum allowed for his maintenance—Such report was ordered to be confirmed, and the costs of the committee and next of kin of the lunatic to be taxed, and such costs, when taxed, and other costs which had been taxed under a former order, were directed to be raised and paid out of the monies to arise from the sale of the estates of the lunatic thereafter directed to be sold, and out of the balance remaining in the hands of the committee—And it was ordered, “that the several freehold and leasehold estates and other property belonging to the lunatic, comprised in the several valuations made thereof respectively, as stated in the said report, should be sold either by public auction or private contract, with the approbation of the Master, (subject to any mortgage or mortgages thereon, or any part thereof, in case the mortgagee or mortgagees should

not concur in such sale), to the best purchaser or purchasers that could be gotten for the same, to be allowed by the Master, wherein all proper parties were to join as the Master should direct, with liberty for the Master out of the purchase-money of a particular estate to discharge part of the principal sum due to a mortgagee upon his joining in the conveyance to the purchaser. And in order to effect the sale, all deeds and writings relating to the estates in the custody or power of the committee or of any other persons, were to be produced before the Master, as he should direct; who was also ordered to settle a sum as a reserved bidding for the estates, in order to prevent the same from being sold under the real value, and to appoint one or more persons to bid for the same accordingly; and notice of attending before the Master was directed to be given to the heir-at-law and next of kin of the lunatic (*f*).

Where the Master certified by his report, that, in pursuance of an order made for sale of a lunatic's estate, he had caused advertisements to be inserted in the *London Gazette*, and in several London newspapers, for sale at the public room of the Court of Chancery, and that a person who attended and was the highest bidder, was allowed by the Master to be the purchaser, and such report had been confirmed; on the petition of such purchaser it was ordered, that he should forthwith pay the amount of his purchase-money and the interest thereon (to be verified by affidavit) into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, on the credit of the matter, to an account to be intitled "the produce of the sale of the real estate of the lunatic," which was to be invested in the purchase of 3*l. per cent.* Consol. Bank Annuities; and it was ordered, that upon payment of such purchase-money and interest, the committee of the estate of the lunatic, in his name and on his behalf, should execute a proper conveyance or other assurance of all the estate and interest of the lunatic in the estate sold to the purchaser, his heirs, and assigns, or as he or they should direct (*g*).

(*f*) *In re Humpleby*, 9 May, 1831.

(*g*) *In re Wharton*, 22 March, 1832.

In a case, where large estates were settled on the lunatic for life, with remainder to his first and other sons in tail, and the eldest son, being of age, was desirous of purchasing the life-interest of his father, (a sum of money being required for payment of incumbrances on the estates and the debts of the lunatic), and the Master had reported in favour of the son's proposal, which was objected to by the committee and younger children of the lunatic—Lord *Brougham*, C., expressed a very strong opinion against sanctioning the proposed purchase by the eldest son, and said, that the Court would not be justified in ordering the sale of the lunatic's life-interest in a large estate, except in a case of urgent necessity; for the Court always contemplated the possibility of the lunatic's recovery; and if on that event, instead of being restored to his property, he found that his interest in his family estate had been disposed of, it would have a most injurious effect upon his mind (*h*). In the same case it was afterwards proposed by the committee to raise a sum of money on mortgage of the lunatic's estates for payment of his debts, and by his son to become the purchaser of the life-interest of his father; when it was referred to the Master to inquire and certify whether it would be proper, and for the benefit of the lunatic, (regard being had to his circumstances and estate), that a particular sum or any other sum should be raised, or that provision should be made for raising any and what sums of money by mortgage, annuity, or otherwise, on the estates of the lunatic, for the purpose of being applied in satisfaction of all or some, and which of the incumbrances affecting such estates, the debts of the lunatic, and the costs incurred in the lunacy; and if the Master should be of opinion in the affirmative, then he was to inquire whether the same should be raised upon the terms proposed by the committee, or upon the terms proposed by the lunatic's eldest son, or in any other and what manner, either by way of mortgage or otherwise, on the son's consenting to join in a new settlement of part of the estates, (if the Master thought the same ought to be made), and

(*h*) *In re Frank*, 31 Aug. 1831.

upon being paid a sum of money in addition to that before allowed to him for his maintenance; and if the Master should think that an act of Parliament was necessary for effecting any settlement, then he was to inquire whether it would be proper, and for the benefit of the lunatic, his family and estate to apply to Parliament for such act (*i*).

The Master reported that it would be advantageous to raise a sum of money on mortgage of the estates of the lunatic, to be applied in satisfaction of the incumbrances on his estates, and his debts; and recommended that the eldest son should be at liberty to purchase an annuity on the life of his father, to be secured to the son, his executors, administrators, and assigns, during the life of the former, and charged on part of his estates: and (subject to such annuity, and the mortgage directed to be made,) that such estates should be again settled on the lunatic for life, remainder to his eldest son for life, with limitations in strict settlement to his sons, with remainder to the other sons of the lunatic and their issue, in strict settlement, with provisions and powers for raising portions and creating jointure rent-charges, and other usual powers; and that it would be proper to apply for an act of Parliament, for carrying such arrangement into effect. The last report was confirmed, and the committee was directed to grant an annuity to the eldest son, charged on the lunatic's estate, and (subject to such annuity and to a mortgage for securing the sum directed to be raised, which was to be executed by the eldest son to the persons advancing the money,) the committee was ordered to join with all necessary parties in executing the requisite deeds for effecting the proposed settlement of the estates, and to apply to Parliament for an act for that purpose; and the costs of the committee and the younger children of the lunatic, incurred in carrying such arrangement into effect, were directed to be taxed and paid out of his estate (*k*).

Orders have, in some instances, been made for carrying into effect, or rescinding, contracts made by lunatics before the

(*i*) *In re Frank*, 20 March, 1832.

(*k*) *Id.* 12 May, 1832.

inquisition, for sale of part of their property. Thus, in one case, the Master was directed to receive proposals for the sale, by private contract, of a freehold house belonging to the lunatic, which he had agreed to sell before the inquisition, with liberty for the Master to sell the same at such price as he should think reasonable: he reported that the sum which had been offered was a fair price; and, on the petition of the purchaser, such report was confirmed, and the usual directions were given for carrying the sale into effect (*l*). And in another case, an order was made for rescinding a contract, made by the lunatic before the commission of lunacy, for sale of part of his property (*m*).

In a case where a testator devised his real estates to trustees, in trust to divide the same in equal moieties between his two daughters, one of whom was afterwards found a lunatic by inquisition; and on a bill being filed by the creditors of the testator against the lunatic and her committee and others, for payment of their debts, a decree was made by the Court of Chancery for sale of so much of the testator's real estates as would be sufficient to pay such of his debts as should not be satisfied out of his personal estate; and the real estate was sold under such decree, and the purchase-money had been paid into Court. When a petition was presented by the surviving trustee of the will and the purchaser, for the purpose of obtaining an order for a conveyance from the committee of the lunatic; it was doubted whether the application was made by the proper person within the meaning of the statute 11 Geo. 4 and 1 Wm. 4, c. 60, s. 11; but, on a petition being afterwards presented by the lunatic herself, it was referred to the Master to inquire whether the moiety of the estate lately belonging to her had been properly sold; and, if so, then the committee of her estate was ordered to join, with all proper parties, in executing such conveyances to the purchaser as the Master should deem necessary (*n*).

(*l*) *In re Iredale*, 26 April, 1827; see 11 Geo. 4 and 1 Wm. 4, c. 65, s. 27.

(*m*) *In re Lucas*, 9 Aug. 1827.
(*n*) *In re Bird*, 25 April, 1832; see *post*, s. 3.

Generally speaking, where the estates of a lunatic are directed to be sold, his committee will not be allowed to become the purchaser, on the same principle as trustees (o), assignees of the estates of bankrupts (p), and other persons in a confidential relation towards the parties interested, are prohibited from purchasing estates of which they have the management in those capacities.

In a case, where it appeared that sums of money, advanced by the committee of the person and estate of a lunatic were due to the former, and that the lunatic was entitled to a share of trust funds on the death of another person, which had been estimated by the Actuary of the Equitable Assurance Office to be worth 1694*l.*, and that there were debts due from the lunatic to such committee and other persons, and the Master had reported that it would be expedient, and for the advantage of the lunatic, to sell such interests according to the valuation, and that an annuity should be purchased out of the produce of such sale, for the benefit of the lunatic—It was ordered that such committee and other persons should be considered creditors on the lunatic's estates, for the sums mentioned in the report; and that, upon the committee entering into a joint bond with two other parties, to be approved by the Master, for securing an annuity to the lunatic, and upon such bond being deposited in the Master's office, the committee should be at liberty to become the purchaser of all the estate and interest of the lunatic under a particular will at the price of 1600*l.*; and that, after the execution of such bond, the committee should be at liberty to sell such interests of the lunatic, either by public auction or private contract, for any sum not less than 1600*l.*, with liberty for the committee to execute all necessary deeds for carrying such sale into effect; and it was further ordered, that in case the committee should elect to become the purchaser of the lunatic's interest at the sum of 1600*l.*, or in

(o) *Ex parte Lacey*, 6 Ves. 627; 707; *Ex parte James*, 8 Ves. 337; *Lister v. Lister*, Id. 631; *Downes v. Grazebrook*, 3 Mer. 208. *Ex parte Bennett*, 10 Ves. 381; see Sugd. V. & P., p. 886; 11th ed.

(p) *Ex parte Reynolds*, 5 Ves.

case he should make such sale as aforesaid, that then, out of such money, he should purchase a government annuity for the life of the lunatic; whereupon the bond which he should execute was to be vacated (*q*).

Any committee or trustee on behalf of lunatics and *cestui que trusts* respectively, may contract for, sell, and convey any lands, tenements, or hereditaments, or if copyhold may enfranchise the same for any of the purposes of the acts 6 & 7 Wm. 4, c. 77, 3 & 4 Vict. c. 113, for carrying into effect the report of the Ecclesiastical Commissioners and of the act 5 & 6 Vict. c. 26, for amending the law relating to ecclesiastical houses of residence. Directions are given as to the application of the purchase-money, and in case of incapacity it is declared that the receipt in writing of any committee or trustee, shall be a sufficient discharge for any such purchase-money therein acknowledged to be received (*r*).

4. *Private acts of Parliament respecting lunatics' estates.*

Before the passing of the statutes mentioned in the preceding part of this section, the sale or mortgage, or other disposition of the estates of lunatics, could be carried into effect only by private acts of Parliament, which were sometimes obtained for those purposes (*s*). The powers conferred by the public acts will not, in many cases, owing to the involved state of the lunatic's affairs or property, or the nature of the intended arrangement, enable the Lord Chancellor to carry the proposed settlement into effect; and therefore resort is now sometimes had to the Legislature for private acts (*t*). Previously to the Lord Chancellor's making an order, directing the committee to apply for a private act of Parliament, it is usually referred to the Master, to inquire whether it will be beneficial to the lunatic's estate. Thus, in one case it was referred to the Master to inquire and certify, whether the lunatic was seised or entitled

(*q*) *In re Butcher*, 21 December, 1831.

(*r*) 5 & 6 Vict. c. 26, s. 12; see *ante*, pp. 260, 261.

(*s*) See Bramwell's Analytical

Table of Private Statutes, tit. Lunatics.

(*t*) See 2 Bl. Comm. 344; Cruise's Dig. tit. 33, Private Acts, *ante*, p. 476.

to the real estates and shares thereof mentioned in the petition, and as to the annual income and condition thereof; and whether it would be proper, and for the benefit of the lunatic and her estate, that the whole of her real estates, and shares thereof, should be sold; and whether it would be proper, and for the benefit of the lunatic, that the petitioner, as her committee, should apply to Parliament for an act to authorize him, and any other and what persons as trustees, to sell the same, or to concur with any other party who might be entitled to any share or interest in such estates, in the sale thereof; and under what conditions such act of Parliament should be applied for and obtained, and whether it should contain a power for the committee, or any other person, to make partition of the estates, in which the lunatic was entitled to an undivided share (*u*).

In another case, where the Master had reported that partnership property, in which the lunatic had a share, could not be divided without the aid of Parliament, it was ordered that his report should be confirmed, and that the committee of the estate should be at liberty to apply to Parliament for an act to empower him, or the committee or committees for the time being of the estate of the lunatic, to sell and dispose of certain property belonging to him; and it was ordered that the committee should join with the other partner in the disposal of the co-partnership property, in such manner, and under such powers of leasing, sale, partition, and exchange, as therein mentioned, and under such other powers and provisoes as might be necessary for the purpose of disposing of the whole of such property to the best advantage, for the benefit of all parties interested therein (*v*). After the act had been obtained, in the last case, it was referred to the Master to inquire and certify what was the best mode to be pursued with regard to the separate property of the lunatic comprised in such act, with reference to the powers therein contained for disposal thereof (*w*).

(*u*) *In re Russ*, 4 February, 1828, an act was obtained. Private Acts, 9 Geo. 4, c. 20.

(*v*) *In re Craven*, 15 March, 1827; an act was obtained in this case;

see Private Acts 7 & 8 Geo. 4, c. 56; an act was obtained *In re Newport*, 10 Geo. 4, c. 30.

(*w*) *In re Craven*, 1 May, 1828.

In another case it was ordered, that the committee of a lunatic's estate should be at liberty to apply to Parliament for obtaining an act of Parliament, for authorizing the sale of such parts of an estate to which the lunatic was entitled as tenant in tail under a particular will, as the Lord Chancellor, or other person intrusted with the care of lunatics, should direct; and for enabling such committee or trustees to invest the money in the purchase of other lands, to be settled to the same uses, with power of granting leases: and that such act should contain a clause directing such a fund to be created, by investment of part of the purchase-money, in the 3*l. per cent.* Consol. Bank Annuities, as would be sufficient to produce an annual sum of a certain amount for the maintenance of the lunatic (*x*).

Private acts have been also obtained for authorizing the granting of leases of the estates of lunatics (*y*); but such acts are not now often necessary, as the general powers contained in the statute, enabling committees to lease, are in most cases sufficient (*z*).

(*x*) *In re Warriner*, 23 Mar. 1830.

(*y*) See Private Acts—*In re Newport*, 4 Geo. 3, c. 2; *In re Duchess*

of Chandos, 33 Geo. 3, c. 79; *In re Sir Thomas Smyth*, 59 Geo. 3, c. 35.

(*z*) See *ante*, pp. 439—441.

SECTION III.

OF CONVEYANCES OF ESTATES AND THE TRANSFER OF FUNDS
VESTED IN LUNATICS AS TRUSTEES OR MORTGAGEES.

1. *The repealed statutes authorizing conveyances and transfers.*
2. *Provisions of the stat. 11 Geo. 4 and 1 Wm. 4, c. 60, applicable to lunatics.*
3. *The course to be pursued for obtaining conveyances and transfers of estates vested in lunatics so found by inquisition.*
4. *Conveyances and transfers from lunatics not so found by inquisition.*
5. *Of the appointment by the Lord Chancellor of new trustees in the place of lunatics.*
6. *Of the costs of obtaining conveyances and transfers from lunatic trustees and mortgagees.*



1. *The repealed statutes authorizing conveyances and transfers.*

THE statute now in force, both in England and Ireland, respecting the conveyance of estates, and the transfer of funds vested in lunatic trustees or mortgagees, is the 11 Geo. 4 and 1 Wm. 4, c. 60; amended as to mortgages by 4 & 5 Wm. 4, c. 23, and 1 & 2 Vict. c. 69. It being often necessary to consider how the law stood previously to the passing of the former act, with the view of determining the validity of titles depending upon orders formerly made, it may be useful in this place, to advert shortly to the repealed statutes, and the decisions upon them. It should be remembered, that, if a conveyance is obtained under the order of the Court, it will not be valid unless the party comes within the provisions of the act (*a*). For where a tribunal determines in a matter not within its jurisdiction, the decision is a nullity (*b*).

(*a*) *In re Janaway*, 7 Price, 690.

(*b*) *Attorney-General v. Lord*

Hotham, 3 Russ. 415; *In re Fitzgerald*, 1 Lloyd & G. 20.

By statute 4 Geo. 2, c. 10, persons being idiot, lunatic, or *non compos mentis*, having estates in lands, in trust only for others or by way of mortgage, or their committees, were enabled, and might have been compelled, by the order of the Lord Chancellor of Great Britain, to convey lands so vested in them, in like manner as trustees or mortgagees of sane memory were compellable to convey. By the Irish statute of the 5 Geo. 2, c. 8, the Lord Chancellor of Ireland was enabled to make similar orders as to lands in that country. Under the statute 4 Geo. 2, c. 10, a trustee found lunatic by the Master's report, could not have been ordered to convey unless a commission had issued (*c*); but where a commission had issued, the Court ordered the lunatic and his curator to join in the conveyance (*d*). It was also decided, that a surrender of a copyhold estate could not be obtained, under that statute, from the lunatic heir of a person who had covenanted to surrender copyholds to the uses of a settlement (*e*).

By statute 1 & 2 Geo. 4, c. 114, the Lord Chancellor of Great Britain was enabled to appoint persons, on behalf of those being idiot, lunatic, or *non compos mentis*, to convey lands vested in them in trust, or by way of mortgage, although they had not been found such by inquisition. The statute of the 6 Geo. 4, c. 74, repealed the statute of the 4 Geo. 2, c. 10, and the 1 & 2 Geo. 4, c. 114, and enacted, that when any person seised of any lands or any estate or interest therein, upon any trusts, or by way of mortgage, should be idiot, lunatic, or of unsound mind, it should be lawful for the committees of such persons, or any person to be appointed as thereafter mentioned, in the name of the idiot, lunatic, or person of unsound mind, by the direction of the Lord Chancellor of Great Britain, to convey or otherwise assure such lands to such persons, and in such manner as he should direct. And by the 4th section of the 6 Geo. 4, c. 74, it was enacted that when and so often as the persons seised or possessed as

(*c*) *Ex parte Gillam*, 2 Ves. jun. 587. 1 Ves. sen. 298; *ante*, p. 20.

(*e*) *Ex parte Currie*, *In re Hubald*, 1 Jac. & Walk. 642.

(*d*) *Ex parte Marchioness of Anandale*, Ambl. 80; *Ex parte Lewis*,

aforesaid, being idiot, lunatic, or of unsound mind, should not have been found such by inquisition, it should be lawful for the Lord Chancellor to order or appoint such persons as to him should seem meet, on behalf of the person or persons being idiots, lunatics, or of unsound mind, (but not having been found such by inquisition), to convey or otherwise assure such lands. It was held, that a trustee, to come within the statute of the 4 Geo. 2, c. 10, must be a trustee without interest, and without duties to perform, for the simple purpose of parting with the estate (*f*). But, by the statute 6 Geo. 4, c. 74, s. 10, it was enacted, that the several provisions thereinbefore contained should extend to cases in which a trustee might have some beneficial estate or interest in the lands, funds, or securities vested in him, and also to cases in which the trustee might have some duties to perform. And by statute 7 Geo. 4, c. 43, the provisions therein contained, for enabling trustees in Ireland to convey, were extended to cases of trustees having a beneficial interest or duties to perform.

2. *Provisions of stat. 11 Geo. 4 and 1 Wm. 4, c. 60, applicable to lunatics.*

The statutes of the 6 Geo. 4, c. 74, and the 7 Geo. 4, c. 43, and the Irish statute of the 5 Geo. 2, c. 8, are repealed by the statute 11 Geo. 4 and 1 Wm. 4, c. 60, s. 1.

Committees of lunatic trustees or mortgagees may be ordered to transfer land or stock.—Where any person seised or possessed of any land (*g*) upon any trust, or by way of mortgage, shall be lunatic, the committee of the estate of such person, may, by the direction of the Lord Chancellor of Great Britain, being intrusted by virtue of the Queen's sign manual with the

(*f*) *Ex parte Tutin*, 3 Ves. & Bea. 149; and see ——— v. *Handcock*, 17 Ves. 383; *Ex parte Chasteney*, Jac. Rep. 56.

(*g*) It will be necessary to bear in mind the second section of the act which contains rules for the interpretation of certain words in it.

The word "land" extends "to any manor, messuage, tenement, hereditament, or real property, of whatever tenure, and to property of every description transferrable otherwise than in books kept by any company or society, or any share thereof, or interest therein.

care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, to convey such land, in the place of such trustee or mortgagee, to such person, and in such manner, as the Lord Chancellor shall think proper; and every such conveyance shall be as effectual as if the trustee and mortgagee, being lunatic, had been of sane mind, memory, and understanding, and had made and executed the same" (*h*).

Where any *stock* shall be standing in the name of any person who shall be a lunatic, *as a trustee or executor*, alone or jointly with any other person, or shall continue to be standing in the name of a deceased person whose executor shall be lunatic, or shall be otherwise vested in or transferrable by any person who shall be lunatic, for the benefit of some other person, the Lord Chancellor, intrusted as aforesaid, may direct the committee of the estate of any such lunatic to transfer or join in transferring such stock to or into the name of such person, and in such manner as the said Lord Chancellor shall think proper, and may also order such person appointed as aforesaid to receive and pay over, or join in receiving and paying over, the dividends of such stock, in such manner as the said Lord Chancellor shall direct; and every such transfer, receipt, and payment shall be as effectual as if the person being lunatic had been of sane mind, memory, and understanding, and had transferred, received, and paid, or joined in transferring, receiving, and paying such stock or dividends (*i*).

The word "stock" extends to "any fund, annuity, or security transferrable in books kept by any company established, or to be established, or to any money payable for the discharge or redemption thereof, or any share or interest therein." The word "executor" extends "to any administrator or other personal representative" (*j*).

A petition for an order for payment of debts and costs due from the lunatic and his estate, the respective amounts appearing on the Master's report, prayed an order for a transfer to the sister of the lunatic, who had been appointed the committee both of his person and estate, of a moiety of a sum of

(*h*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 3. (*i*) *Ib.* s. 4. (*j*) *Ib.* s. 2.

stock standing in the names of the lunatic and his sister as joint tenants. The Master's report stated a conversation that had been deposed to by a witness, as having taken place during the father's lifetime, in which the father stated he had purchased the stock in question for the lunatic and his sister jointly, and invested it in their joint names. The Lord Chancellor was of opinion that the act (the 11 Geo. 4 and 1 Wm. 4, c. 65, s. 33) (*j*), proceeded on the assumption, that the property *belonged beneficially* to the lunatic; and that the act (11 Geo. 4 and 1 Wm. 4, c. 60, s. 4), had reference only to *trust* property; and that, according to the facts before him, the stock was held in joint tenancy, and was neither wholly a beneficial fund nor a trust fund, as regarded the lunatic: but his Lordship observed, there could be no objection to an order that the lunatic's share of the dividends should be paid and applied for his maintenance from time to time, as they became due (*k*).

An application was made under the act 11 Geo. 4 and 1 Wm. 4, c. 60, by petition, that the committee appointed in Ireland of the estate of a lunatic, or such other person as the Court should direct, might be ordered to transfer a sum of stock standing in the name of the lunatic, as the only acting executor under the will, to the parties entitled beneficially thereto. The executor had been duly found a lunatic in this country by inquisition; but the lunatic having no estates, except such as were situate in Ireland, no committee had been appointed by the Lord Chancellor; but a transcript of the inquisition having been forwarded to Ireland, the Lord Chancellor of Ireland, on the production of the transcript, appointed a committee to the lunatic's estates there. The Master had reported the lunatic to be an executor and trustee of the stock in question, and it was admitted that there was no intention of proceeding to the appointment of any committee of the lunatic in this country in respect of any of the lunatic's estates. The Lord Chancellor was of opinion that he had no jurisdiction to direct the transfer of the stock in question by the committee of the estates in Ireland, or by any other person except a committee of the lunatic's

(*j*) *Ante*, pp. 265, 266.

(*k*) *In re Lynn*, 2 Jur. 200.

estates appointed in this country ; and his Lordship added, that if the executor had *not* been found a lunatic by *inquisition*, he could have made an order for the transfer as prayed, inasmuch as the 5th section of the 11 Geo. 4 & 1 Wm. 4, c. 60, expressly provides for that particular case (*l*).

A person may be appointed to transfer before inquisition.—Where any such person as aforesaid, *ante*, pp. 484, 485, being lunatic, shall *not have been found such by inquisition*, the Lord Chancellor, intrusted as aforesaid, may direct any person whom such Lord Chancellor may think proper to appoint for that purpose, in the place of such last-mentioned lunatic, to convey or join in conveying such land, or to transfer or join in transferring such stock, and receive and pay over the dividends thereof, as thereinbefore is mentioned ; and every such conveyance, transfer, receipt, or payment, shall be as effectual as if the said person being lunatic had been of sane mind, memory, and understanding, and had made, done, or executed the same ; but where any sum of money shall be payable to such lunatic, no such last-mentioned order shall be made, if such sum of money shall exceed 700*l*. ; and where any sum not exceeding 700*l*. shall be payable to such lunatic, and any such order shall be made, the Lord Chancellor, intrusted as aforesaid, shall direct to whom, and in what manner, the money so payable shall be paid ; and every payment made in pursuance of such direction shall effectually discharge the person paying the same from the money which he shall so pay (*m*).

A necessary party to a conveyance by the Court, to be approved of by the Master, appearing to be of unsound mind, a supplemental bill was filed, praying that it might be declared that such party was a trustee for the owners of the estate. The Court made the declaration accordingly ; and on an application to the Lord Chancellor, under the fifth section of

(*l*) *In re Tottenham*, 1 Jur. 653.

(*m*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 5. It seems that this section extends only to cases where the lunatic is either an *executor*, *trustee*, or *mortgagee*, having a beneficial interest in the fund, in his own right

not exceeding 700*l*. ; and that it does not apply to the case of a lunatic not so found by inquisition, who fills none of such characters, although his interest may not exceed that sum ; see *ante*, pp. 220, 221.

the 11 Geo. 4 and 1 Wm. 4, c. 60, his Lordship ordered a person to execute the conveyance in the place of the lunatic (*n*).

In a suit by an equitable mortgagee against the mortgagor, who, subsequently to the mortgage, had become of unsound mind, the estate was sold under the direction of the Court, and all proper parties were ordered to join in conveying it—it was held, that the mortgagor was a trustee within the 11 Geo. 4 and 1 Wm. 4, c. 60, and the Lord Chancellor made an order, appointing some one to convey in his stead, without a reference upon the necessary evidence of unsoundness of mind being produced in Court (*o*).

Cases of contested lunacy not within the fifth section.—The summary jurisdiction given to the Lord Chancellor by the 11 Geo. 4 and 1 Wm. 4, c. 60, s. 5, for the conveyance or transfer of property vested in persons as trustees or mortgagees who are lunatic, but not found such by inquiry, does not apply to cases in which the fact of lunacy is contested.

Lord *Cottenham*, C., said, “It never could have been intended that this act should be applied in a contested case. It would be giving me a very extensive jurisdiction; for, where there is a controversy as to the fact of lunacy, the law only pronounces a party lunatic after an investigation of the matter by a jury; whereas I am now asked to interfere with the property of this person, upon a summary process, upon no better evidence than that of conflicting affidavits. In such a case as this, the proper course would have been to file a bill. What I might have done if the party had been a mere bare trustee, and if his unsoundness of mind had been established beyond the possibility of doubt, it is unnecessary now to decide; because, so far from its being clear that this person is incompetent to deal with his property, it seems to me that the evidence, as far as it goes, rather negatives that proposition. My present impression, however, is, that even if the fact of

(*n*) *Meyrick v. Bowyer*, 8 Jur. 566. *v. Leach*, 2 Hare, 57; *Schofield v. Heafield*, 8 Sim. 470; *In re Black-*

(*o*) *Barfield v. Rogers*, 8 Jur. 229, *well*, 7 Jur. 9.
Law J. 1844, Ch. 262; see *King*

unsoundness of mind were much more clearly made out than it is here, it would not be a proper exercise of my discretion, in applying the powers of this act of Parliament, to treat a person as incompetent to manage his affairs, so long as he himself, or his family for him, insist that he is competent, because I am of opinion, that the act was only intended to enable parties entitled to the benefit of a legal estate, to obtain it from a person in whom it is vested, and who is admitted to be incompetent to convey it, and not to involve his family in a controversy, in which they have no sort of interest, as to whether he is a lunatic or not, merely for the accommodation of third persons" (p).

Orders under the act to be made upon petition.—Every order to be made in pursuance of the act 11 Geo. 4 & 1 Wm. 4, c. 60, by the Lord Chancellor, intrusted as aforesaid, shall be signified upon petition in the lunacy or matter; and such person as hereinafter is mentioned, shall be the petitioner, whether such person be or be not under any legal disability; (that is to say), if the same shall relate to a conveyance, transfer, receipt, or payment, to or in such manner as may be directed by any person beneficially entitled, then, upon the petition of the person or some or one of the persons beneficially entitled to the land, stock, or dividends to be conveyed, transferred, received, or paid; and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee duly appointed, under a power or by the Court of Chancery, either alone or with any continuing trustee, then upon the petition either of the trustee or some or one of the trustees in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in mortgage, then, upon the petition of the person or some or one of the persons entitled to the equity of redemption thereof, or of the person or some or one of the persons entitled to the monies thereby secured, or the committee or some or one of the committees of the person entitled to such monies if a lunatic (q).

Lord Chancellor or Court may direct a bill to be filed to es-

(p) *In re Walker*, 1 Cr. & Ph. 149, 150.

(q) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 11.

tablish the right.—Where, on account of the length of time which shall have elapsed since the creation or last declaration of a trust, the title of the person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested, in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof; or if under other circumstances it shall appear to the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, or any other Court therein-before mentioned, not proper to make an order upon petition; it shall be lawful for such Lord Chancellor, or any such Court, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and upon the establishment by a decree of such right, by the same decree, or any order in the cause or in the lunacy, or both, to direct a conveyance or transfer to be made according to the intent of that act (*r*).

Who shall be named in the orders of the Court for making transfers.—In all cases in which orders shall be made, in pursuance of that act, for the transfer of stock, the person to be named in such order for making such transfer shall either be the committee of the estate of the person being lunatic, in whose place such transfer shall be made, or a co-trustee or co-executor of the person in whose place such person shall be directed to transfer, or some officer of the company or society in whose books the same respectively shall be directed to be made; and where such transfer shall be directed to be made in books kept by the Governor and Company of the Bank of England, such officer shall be the Secretary or Deputy Secretary or Accountant-General for the time being of the said Governor and Company, or his deputy (*s*).

Act to be an indemnity to the Bank and other companies.—That act is declared to be a full and complete indemnity and discharge to the Governor and Company of the Bank of England, and all other companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto, and that such acts and things shall

(*r*) 11 Geo. 4 & 1 Wm. 4, c. 60, 677; 5 Sim. 500.
s. 12; see 2 My. & K. 624; 1 Id. (s) *Ib.* s. 32.

not be questioned or impeached in any Court of law or equity to their prejudice or detriment (*t*).

Any committee directed by the act to make any conveyance or transfer, or receipt or payment, may be compelled by the order to be obtained as directed by the act, to execute the same in like manner as trustees of full age and of sane mind are compellable to convey, transfer or receive, and pay over trust estates vested in them (*u*).

To what cases the act shall extend.—Every person, being in other respects within the meaning of the act, shall be deemed to be a trustee within the meaning of the act, notwithstanding he may have some beneficial estate or interest in the same subject, or may have some duty as trustee to perform; but, in every such case, and in every case of a mortgagee (not being a naked trustee), it shall be in the discretion of the said Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and not to make the order for such conveyance or transfer, unless by the decree to be made in such cause, or until after such decree shall have been made (*v*).

That where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, either having received the purchase money for the same or some part thereof, or not having received any part thereof, and a specific performance of such contract, either wholly or as far as the same remains to be executed, or as far as the same by reason of the infancy can be executed, shall have been decreed by the Court of Chancery in the lifetime of such vendor or after his decease, and where one person shall have purchased an estate in the name of another, but the nominal purchaser shall, on the face of the conveyance, appear to be the real purchaser, and there shall be no declaration of trust from him, and a decree of the said Court, either before or after the death of such nominal purchaser, shall have declared such

(*t*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 33. § Sim. 395.

(*u*) *Ib.* s. 13; see *ex parte Foley*, (*v*) *Ib.* s. 15; see 5 Sim. 498.

nominal purchaser to be a trustee for the real purchaser, then and in every such case the heir of such vendor, or such nominal purchaser or his heir, in whom the premises shall be vested, shall be and be deemed to be a trustee for the purchaser within the meaning of the act 11 Geo. 4 & 1 Wm. 4, c. 60 (*w*).

Where any land shall have been contracted to be sold, and the vendor or any of the vendors shall have departed this life, having devised the same in settlement so as to be vested in any person for life or other limited interest, with any remainder, limitation, or gift over, which may not be vested, or may be vested in some person from whom a conveyance of the same cannot be obtained, or by way of executory devise, and a specific performance of such contract, either wholly or so far as the same remained to be executed, shall have been decreed by the Court of Chancery, it shall be lawful for the Court by whom such decree shall be made, by the same or any other decree, or any decretal order, or upon petition in the cause, to direct any such tenant for life or other person having a limited interest, or the first executory devisee thereof, to convey the fee simple or other the whole estate contracted to be sold to the purchaser, or in such manner as the said Court shall think proper; and every such conveyance shall be as effectual as if the person who shall make the same were seised of the fee simple or other the whole estate contracted to be sold (*x*).

A testatrix devised a freehold property, in which she had an equitable estate in fee, to A. for life, with remainder to B. for life, with remainder to the family of B. (who were infants), in strict settlement. She then contracted to sell part of the estate, and died before the conveyance. After her decease the legal estate was got in, and the owners of it, together with the tenants for life, were willing to complete the purchase:—it was held, nevertheless, that in order to give the purchaser an immediate estate in fee, both legal and equitable, a decree for specific performance of the contract, under the stat. 11 Geo. 4 and 1 Wm. 4, c. 60, s. 17, was necessary, and that as this was a question of title, and the vendor had contracted to deduce a

(*w*) 11 Geo. 4 & 1 Wm. 4, c. 60,
s. 16; see *ib.* c. 65, s. 27.

(*x*) 11 Geo. 4 & 1 Wm. 4, c. 60,
s. 17.

good title at her own expense, and there was no laches on either side, the costs of the suit must be paid out of the vendor's estate (z).

The several provisions before contained in the act 11 Geo. 4 & 1 Wm. 4, c. 60, shall extend to every other case of a constructive trust, or trust arising or resulting by implication of law; but in every such case where the alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee until after it has been declared by the Court of Chancery, in a suit regularly instituted in such Court, that such person is a trustee for the person so seeking a conveyance or transfer; but this act shall not extend to cases upon partition, or cases arising out of the doctrine of election in equity, or to a vendor, except in any case thereinbefore expressly provided for (a).

An exchange of lands, or an exchange of lands where a sum of money forms part of the consideration by way of equality of exchange, is not within either the sixteenth or eighteenth sections of statute 11 Geo. 4 & 1 Wm. 4, c. 60 (b).

Where any feme covert would be a trustee, mortgagee, heir, or executor, within the provisions of that act, if she were an infant or lunatic, or out of the jurisdiction or not amenable to the process of the Court of Chancery or Exchequer, or had refused or neglected as aforesaid to execute or make such conveyance, transfer, receipt, or payment as thereinbefore is mentioned, and the concurrence of her husband shall be necessary in any conveyance, transfer, receipt, or payment which ought to be made or executed by her as such trustee, mortgagee, heir, or executor, then and in any such case such husband, whether under any disability or not, shall be and be deemed to be a trustee within the meaning of that act (c).

The provisions thereinbefore contained for obtaining conveyances from any person being lunatic shall extend to and

(z) *Farrar v. Earl of Winterton*, 4 You. & Coll. 472.

502; see *In re Neachel*, Law J. 1845, Ch. 121; *ante*, p. 337.

(a) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 18; see ss. 16, 17.

(c) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 19.

(b) *Turner v. Edgell*, 1 Keen,

include all persons being lunatic, who, by force of any law for payment of debts out of real estate, would, or thereafter might be compellable to convey any land if of sound mind(*d*).

The provisions thereinbefore contained extend to all cases of petitions in which the Lord Chancellor, intrusted as aforesaid or the Court of Chancery, or any of the Judges thereof, is by law authorized and empowered to grant relief and make summary orders without suit, either in matters of charity, or relative to or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof, or in matters relative to any benefit or friendly societies, or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof (*e*).

Who may exercise the powers given by the act.—The powers and authorities given by the act 11 Geo. 4 and 1 Wm. 4, c. 60, to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall extend to all land and stock within any of the dominions, plantations, and colonies belonging to the Crown except Scotland and Ireland (*f*).

The act 11 Geo. 4 and 1 Wm. 4, c. 60, does not apply to conveyances of land out of the Queen's dominions (*g*).

The powers and authorities given by that act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by, and are thereby given to the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all land and stock in Ireland (*h*).

The powers and authorities given by that act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by and are thereby given to the Lord Keeper or Commissioners of the Great Seal of Great Britain for the time being, intrusted as aforesaid; and the powers and authorities given by that act to the Lord Chancellor of Ireland, intrusted as aforesaid, shall and may be exercised in like manner by, and are thereby given to the Lord

(*d*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 20; see 11 Geo. 4 & 1 Wm. 4, c. 47; 2 & 3 Vict. c. 60.

(*e*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 21.

(*f*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 26; see *ante*, p. 484, n. (*g*.) p. 485.

(*g*) *Price v. Dewhurst*, 8 Sim. 617.

(*h*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 27.

Keeper or Commissioners of the Great Seal of Ireland for the time being, intrusted as aforesaid (*i*).

3. *The course to be pursued for obtaining conveyances and transfer of estates vested in lunatics so found by inquisition.*

It is ordered that no petition, relating to lunatic trustees under the act of 11 Geo. 4 and 1 Wm. 4, c. 60, be brought on for hearing, unless two days' notice shall have been given to the Secretary of Lunatics, and to all parties interested (*k*). The references under this act are still made to the Masters in ordinary of the Court of Chancery, and not to the Masters in Lunacy (*l*).

The orders of reference under the act 11 Geo. 4 and 1 Wm. 4, c. 60, can only be made by the Lord Chancellor, or the persons for the time being entrusted by the Queen's sign manual with lunatics, and not by the other Judges of the Court of Chancery (*m*).

When it is desired to obtain a reconveyance of property vested in a lunatic, either as a trustee or mortgagee, a petition (*n*) must be presented, either by the committee of the estate, or by the mortgagor, or by some person having a beneficial interest in the trust property or money secured on mortgage, stating the deed creating the trust or mortgage, and such other facts as are necessary to shew the right of the party seeking to obtain the transfer; upon this petition, it will be referred to the Master to inquire and certify whether the party be a lunatic trustee or mortgagee within the meaning of the act of the 11 Geo. 4 and 1 Wm. 4, c. 60. If the Master finds that the party is a lunatic mortgagee within that act, another petition must be presented for confirming his report; upon which he will be directed to compute the principal and interest due in respect of the mortgage; and an order will be made, that, upon payment by the mortgagor to the committee of the estate of the lunatic, of what the Master shall compute for such principal

(*i*) 11 Geo. 4 & 1 Wm. 4, c. 60, s. 28.

(*k*) Order in Lunacy, 23 Feb. 1832; see *ante*, p. 100.

(*l*) 2nd Order, 27 Oct. 1842; *ante*, p. 166.

(*m*) *In re Shorrocks, Ex parte Wallis*, 1 My. & Cr. 31; *In re Mount*, Law J. 1843, Ch. 95; *ante*, p. 20.

(*n*) See Forms of such Petitions in the Appendix.

and interest to the time of payment, the committee of the estate of the lunatic be at liberty, in his name and on his behalf, to reconvey the estate comprised in the mortgage to the mortgagor, or as he shall direct; such reconveyance to be settled by the Master in case the parties differ about the same. And a further order will be made for referring it to the Taxing Master to tax the costs incurred by both parties in obtaining the orders, and that such costs (after deducting the expense of the reconveyance, which will be directed to be paid by the mortgagor) be paid by the committee out of the lunatic's estate, and allowed in passing his accounts, and that notice of attending the Master be given to the mortgagor.

Where the Master finds the party to be a *lunatic trustee* within the act, on confirming his report, the committee of the estate of the lunatic will be ordered to convey the land, or transfer the funds vested in him as such trustee, upon payment, by the party making the application to the committee, of the costs occasioned by, and consequent on, the petitions and orders, such costs having been taxed, and the conveyances settled, by the Master, in case the parties differ about the same.

In some cases, where stock standing in the name of a lunatic, either alone or jointly with other persons, as trustees or executors under a will, has been ordered to be transferred by the committee of the lunatic into the names of the other trustee, or new trustees, in trust for the parties entitled, the Lord Chancellor has directed all parties claiming any interest under the will in question, to execute a release and indemnity to the committee of the lunatic against all claims and demands, on account of the stocks so directed to be transferred (*p*).

In one case, on the confirmation of the Master's report approving new trustees of a will in the place of the lunatic, it was ordered, that a proper release and indemnity of the lunatic and his estate should be given and executed to him and his committee, by such of the parties claiming any shares under the will in question, as the Master should approve, (such release

(*p*) *In re Palmer*, 29 March, 1828; *In re Craven*, 8 July, 1829; see *Simmons v. Bolland*, 3 Mer. 547; *Vernon v. Egmont*, 1 Bligh, New Ser. 544; *Antrobus v. Davidson*, 3 Mer. 581, Wms on Executors, 831.

to be settled by him in case the parties differed); and, upon its execution, the committee was ordered to transfer stock in the lunatic's name, into the names of the new trustees; and the costs of the proceedings were directed to be paid to the committee out of the trust fund (*q*).

But where stock standing in the name of a lunatic, as surviving trustee and executor under a will of a testator, was ordered to be transferred to the party beneficially entitled, and, from the length of time which had elapsed since the death of the testator it might fairly be presumed that all his debts and legacies had been paid, and his assets duly administered, such transfer was directed to be made, without requiring any release or indemnity (*r*).

4. *Conveyances and transfers from lunatics not so found by inquisition.*

When a lunatic trustee or mortgagee *has not been so found by inquisition*, and a conveyance is desired to be obtained, the Lord Chancellor will, on the petition of the mortgagor (*s*), or of the persons beneficially interested in the money due on mortgage or in the trust property, refer the matter to a Master in Chancery, to make the necessary inquiries—Lord *Brougham*, C., said, the reference ought to contain the following points.

First, an inquiry whether the alleged trustee or mortgagee was an idiot, lunatic, or of unsound mind, or incapable of managing his affairs; and if so,

Secondly, whether he was seised or possessed of the estate or hereditaments and premises in the petition mentioned, or of any and what parts thereof, either alone or jointly with any other and what persons, as a trustee or trustees, upon any and what trusts, or by way of any and what mortgage, and for whom within the meaning of the act;

Thirdly, whether the alleged lunatic trustee or mortgagee took any and what beneficial interest therein;

Fourthly, whether there was any and what power or authority under the deed or instrument by virtue of which the alleged

(*q*) *In re Brand*, 24 May, 1831.

(*r*) *In re Steers*, 24 July, 1829.

(*s*) See forms of such Petitions in the Appendix.

lunatic became a trustee or mortgagee, to appoint a new trustee or trustees; and if not, then

Fifthly, a direction to inquire and certify who was a proper person or persons to be appointed such new trustee or trustees in the room of ———; and also

Sixthly, to appoint a proper person to convey to such new trustee or trustees (*t*).

On an inquiry before the Master the parties must produce the deeds creating the trust or mortgage, and the affidavits of one or more medical men, as to the lunacy or unsoundness of mind of the party from whom the conveyance is sought to be obtained, and such other evidence as the Master shall require for establishing the right of the persons requiring the conveyance. If the Master finds, by his report, that the party is of unsound mind, that he is seised of the estates mentioned in the petition, either as a mortgagee or trustee within the act, and that he has approved of a person to be appointed to convey on behalf of such party; on another petition being presented, such report will be confirmed, (unless sufficient reason should be shewn against it), when the Lord Chancellor will appoint the person named in the report to convey, and, in the case of a mortgage, direct such person to convey upon payment of the principal money and interest due thereon.

The Master's report should not merely state that a party is a trustee, but the documents which make out the trust should be stated on the face of the report to enable the Court to judge of the propriety of the conclusion (*tt*).

Where the Master finds that the party is a lunatic, or of unsound mind, and possessed of funds within the meaning of the act, and that such trustee has no beneficial interest therein, on the confirmation of the Master's report an order will be made, that the proper officer of the Bank or other public company do transfer, or, if there are other trustees, join in transferring the funds vested in the lunatic to the parties interested, who will be directed to pay the costs of all parties.

On the petition of the parties entitled to the equity of redemption of an estate, it will be referred to the Master to

(*t*) *In re Pigott*, 2 Russ. & M.
684.

(*tt*) *Per Sir E. Sugden, C., In re Purdon*, 1 Dr. & War. 500.

inquire whether the mortgagee, who had not been found a lunatic by inquisition, is a lunatic, or of unsound mind, and if so, whether he was seised of the estate mentioned in the petition, as a trustee or mortgagee within the meaning of the act 11 Geo. 4 and 1 Wm. 4, c. 60, and whether he had any and what beneficial estate or interest therein; and if the Master find the party to be such mortgagee, then the Master will be ordered to certify the amount remaining due for principal and interest on the mortgage, and whether the said mortgagee was entitled thereto, or to any and what part thereof, in his own right, and for his own benefit, or in trust for any other persons, and whom and who is entitled to the equity of redemption of the mortgaged premises. And if the Master shall find the alleged lunatic to be entitled to such principal and interest, or any part thereof for his own benefit, and the amount to which he is entitled, shall not exceed 700*l.* (*u*), then the Master is further to inquire who is a proper person to be appointed in the place of the alleged lunatic to receive the amount due to him, and to settle and take from such person security for the due application of such amount, and to approve of a proper person to be appointed in the place of the lunatic to convey the mortgaged premises.

The Master's report must be confirmed when the necessary order for effecting the objects of the petition will be made.

The Lord Chancellor can, if he think proper, on being satisfied that a trustee is of unsound mind, and that the property sought to be transferred is vested in him upon trust, and that he has no beneficial interest therein, order a conveyance and transfer of lands and money in the funds to new trustees without any reference to the Master (*v*). But the reference to the Master is very rarely dispensed with, as it is obvious it would impose upon the Court the duties which ought to be done by the Master.

If the stock or fund which is required to be transferred belongs to a married woman, and the husband applies to receive it, the wife must be examined in Court in the usual

(*u*) See *ante*, p. 487.

11 Aug. 1828; see *Parker v. Burney*,

(*v*) *In re The Earl of Liverpool*, 1 Beav. 492, *ante*, p. 488.

way, if resident in this country, or, if not, by commissioners abroad, to be appointed for that purpose, in order to consent to the proposed transfer or payment. Thus, where stock in the *3l. per cent. Consol. Bank Annuities* was standing in the name of a lunatic trustee, on the petition of the husband and wife, it was ordered that the wife should be at liberty to attend certain commissioners at Calcutta, who were to examine her apart from her husband, as to whom and in what manner, and for what purposes, she was willing and desirous that such stock should be transferred or disposed of; the commissioners having certified that the wife, on her examination, declared that she was desirous that the stock should be transferred, and paid to her husband for his own use and benefit, and that the wife did freely and voluntarily consent to the same, an order was made, on the petition of the husband and wife, for transfer of such stock and the payment of the dividends thereon, to certain persons named in a power of attorney executed by the husband and wife, for his sole use and disposal (v).

5.—*Of the appointment by the Lord Chancellor of new trustees in the place of lunatics.*

The act 11 Geo. 4 and 1 Wm. 4, c. 60, s. 22, recites, that cases may occur, upon applications by petition under that act for a conveyance or transfer, where the recent creation or declaration of the trust or other circumstances may render it safe and expedient for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery (as the case may require), to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointment to file a bill for that

(v) *In re Notley*, 19 November, 1830.

An office copy of the examination and declaration of the wife, with the joint certificate of the commissioners of the due taking of such examination, an office copy of the certificate of a Notary Public residing at Calcutta, verifying the signature of the wife, and an office

copy of the affidavit of the due signing of the examination and certificate, and an office copy of the affidavit verifying the signature of the affidavit, and the joint affidavit of the husband and wife, and the letter of attorney of the petitioners, were produced, on making the above order.

purpose, although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees ; and enacts, that in any such case the Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, may appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under that act, after hearing all such parties as the said Court shall think necessary ; and thereupon a conveyance or transfer shall and may be made and executed, according to the provisions therein-before contained, to or so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually and in the same manner as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted.

This section does not confer upon the Court a general jurisdiction to appoint new trustees upon petition without suit ; the words at the commencement of the section “ upon application by petition under this act ” show that it only has reference to cases where the party might apply by petition under the former sections of the act ; that is in cases of disability, by reason, for instance, of the infancy or lunacy of a trustee, or the fact of his being out of the jurisdiction of the Court. In such cases when there is a disability of the sort pointed out by the act, and a consequent right in the petitioner to apply under the former section, the 22nd section enables the Court to appoint new trustees although, no bill has been filed, and there is no power in the instrument creating the trust (*w*).

New trustees were appointed under the act 11 Geo. 4 and 1 Wm. 4, c. 60, in the stead of a lunatic, not found such by inquisition, to whom together with two other persons, since deceased, a sum of money charged by will upon real estates in the West Indies, and another sum secured by a bond, had been assigned by a deed, dated in 1802, upon certain trusts. The deed contained no power of appointing a new trustee in the place of the trustee of unsound mind. A person was at

(*w*) See *In re Fitzgerald*, Lloyd & G. 20, temp. Sugd.

the same time appointed to assign the sums of money to the new trustees. Lord *Cottenham*, C., observed, that, although that part of the act which related to such cases, was obscure; yet, upon consideration, he was of opinion that the case was within the act (*x*).

The Court may appoint new trustees under 11 Geo. 4 and 1 Wm. 4, c. 60, s. 22, although the instrument creating the trust contains a power to appoint new trustees. *Shadwell*, V. C., said, that section refers to the case of an instrument containing no power to appoint new trustees, as one of the strongest instances of difficulty; but it is not thereby meant that the existence of that circumstance is to be a condition upon which the power thereby given, to the Court, is to be exercised. The Court may make the appointment when the instrument creating the trust, contains no power for that purpose; it surely may do so when the instrument does contain such power (*y*).

A new trustee in the place of an infant heir-at-law of a deceased mortgagee, will not be appointed under 11 Geo. 4 and 1 Wm. 4, c. 60, s. 22, in the absence of the mortgagor, for the trustee is as much so for the mortgagor as for the mortgagee—the mortgagor, if possible, was to be served with the petition, and if he could not, an affidavit was directed to be made when the petition came on again, that he could not be found (*z*).

Where it did not appear that the old trustee, though incapable of managing his affairs, was in a state amounting to lunacy, the Court declined to appoint a new trustee (*a*).

Where the petition of the surviving trustee stated a deed conveying real estate to three trustees, upon certain trusts, with a power for the surviving or continuing trustees or trustee to appoint new trustees, the death of one of them, and that another trustee had, subsequently to the execution of the trust deed,

(*x*) *In re Welch*, 3 My. & Cr. 292; see *In re Fitzgerald*, 1 Lloyd & G. 20; *In re Riley*, 3 Hare, 614; *Price v. Dewhurst*, 8 Sim. 617.

(*y*) *In re Fauntleroy*, 10 Sim. 252.

(*z*) *In re Green*, 9 Jur. 704; 1 Coll. C. C. 91.

(*a*) *In re Wakeford*, 1 Jones & Lat. 2.

become and then was of imbecile and unsound mind, and incapable of managing his affairs, and a deed poll of the other trustee appointing two new ones in the place of the deceased trustee and the imbecile trustee, it was referred to the Master in rotation of the Court of Chancery, to inquire and certify whether such trustee was an idiot, lunatic, or of unsound mind, or incapable of managing his affairs; and, if so, then to inquire and certify whether he was seised or possessed of the estate mentioned in the petition, or of any part thereof, either alone or jointly with any other persons, and whom, within the meaning of the act of the 11 Geo. 4 and 1 Wm. 4, c. 60; and whether such trustee had any beneficial interest therein: and in case the Master should find such trustee to be so seised or possessed, either alone or jointly with any other trustees, but who were deceased or unwilling or incapable to act in the trusts, then he was to inquire and certify, whether there was any power under such deed, or otherwise, to appoint new trustees of the estate of which the lunatic was so seised, and by whom and by whose direction such power had been or ought to be exercised, and whether any persons had been duly appointed new trustees in pursuance of such power, and whether such persons as had been so appointed were then living and willing and capable to act in the trusts; but, if the Master should find that there was no such power, then it was further ordered, that he should inquire and certify who was the most fit person to be appointed such trustee in the room of the lunatic: and, on such new trustee being duly appointed as aforesaid, or approved by the Master, it was further ordered, that the Master should approve of a proper person in the place of the lunatic to convey the estate so vested in him; and due notice of attending the Master was directed to be given to all parties interested (a). The Master, under the last reference, having found that the party was a lunatic trustee within the act, and that he had no beneficial interest in the property, and that the deed contained a power for the appointment of new trustees, under which new ones had been duly appointed, it was ordered

(a) *In re Piggott*, 2 July, 1831.

that the person named by the Master should join with the other trustees in conveying the trust property in the place of the lunatic, so that the same might become vested jointly in one of the former trustees and the two new trustees, upon the trusts of the deed (b).

Where the Master had found that stock was standing in the names of two deceased trustees and a lunatic, upon the trusts of a settlement, and that there were no incumbrances affecting the same, and that the trustees had not any beneficial interest therein—On the petition of the persons proposed as new trustees, and of the parties beneficially interested in the fund, it was referred to the Master to inquire and certify whether there was any power in the settlement to appoint new trustees of the trust funds mentioned in the petition, and by whom, and by whose direction such power (if any) was to be exercised, and, if there was no such power, then the Master was to inquire and certify whether two particular persons were proper to be appointed new trustees in the place of the lunatic, or what persons it would be proper to appoint as such new trustees. The Master, by his report having found that there was no such power, and that he was of opinion that the two persons proposed were fit to be appointed new trustees, the Lord Chancellor ordered the Master's report to be confirmed, and appointed such two persons to be new trustees, in the place of the two deceased trustees and the lunatic, and ordered the committee of his estate to transfer the funds standing in the books of the Bank of England in the names of the deceased trustees and the lunatic, into the names of the new trustees, to be by them held upon the subsisting trusts of the settlement; and the committees were ordered to receive the dividends due up to the time of the transfer, with liberty for them to retain thereout their costs of the applications to the Court and the transfer, such costs to be taxed by the Master in case the parties differed about the same; and the residue of such dividends was to be paid to the new trustees, to be by them applied according to the settlement (c)

(b) S. C. 30 August, 1831.

(c) *In re Stracey*, 4 February, 1831.

6. *Of the costs of obtaining conveyances and transfers from lunatic trustees and mortgagees.*

Questions have been frequently raised, as to the payment of the costs incurred by proceedings under the statutes for obtaining conveyances from lunatic trustees and mortgagees; and the decisions reported upon that subject are not uniform. Thus, where a lunatic had been reported to be a trustee within the 4 Geo. 2, c. 10, and the Court thereupon ordered his committee to convey, and the case stood over for the purpose of determining whether the committee should have his costs the Lord Chancellor determined, that the rule was, that the estate of the *cestui que trust* should not bear the expense, but that it must be paid out of the lunatic's estate (*d*). It appears, however, that, at the hearing of that case, no question as to costs was made, and that a direction to that effect was added for the indemnity of the committee, who had omitted to obtain his costs from the *cestui que trust* (*e*).

Notwithstanding the case last cited, the general rule seems to be, that the costs of the committee of a *lunatic trustee* conveying under the statute are to be paid by the *cestui que trust*. Thus, in a case where a lunatic had been reported to be a trustee within the statute for the grantee of an annuity, and a question arose as to the committee's costs, Lord Eldon, C., after having been furnished with a statement of the practice on this subject, finally ordered, that the committee's costs of the original petition and subsequent proceedings should be paid by the grantee of the annuity and the assignees of the grantor in equal moieties; and declared the general rule to be, that the costs of the committee of a *lunatic trustee* conveying under the statute must be paid by the *cestui que trust* (*f*). But, where a trustee refused to execute a conveyance, which had been settled and approved by the Master, in consequence of which a further petition was presented, to direct him to execute the deed in question; as no sufficient reason appeared why he

(*d*) *Ex parte Brydges*, Coop. C. C. 290; see *Ex parte Cant*, 10 Ves. 554.

(*e*) See 1 Turn. & R. 327.

(*f*) *Ex parte Pearse*, 1 Turn. & R. 325.

had not before done so, the Court would not allow him the costs occasioned by such petition (*g*). So also, where an estate had been conveyed to trustees for the benefit of creditors, and an application was made for a commission of lunacy against one of such trustees, who, after having contracted for the sale of an estate, became of unsound mind and incapable of completing the sale; it was held, that the petitioners must take the order at their own expense, and, if the commission issued, must pay the expenses of it, being for their benefit up to the time of perfecting the title to the estate in question: and the consideration as to their reimbursement, if any other person should adopt the commission, was reserved (*h*).

But the costs incurred by the reference and the necessary orders for enabling the committee of a lunatic, who is *beneficially entitled as mortgagee*, to convey to the mortgagor (*i*), must be paid out of the lunatic's estate, whether the application be made by the mortgagor, or by the committee which is the usual course. Thus, on a petition by a mortgagor, the mortgagee having become a lunatic, for an order under the statute 4 Geo. 2, c. 10, a question arose whether the costs of the petition and reference should be defrayed by the mortgagor or out of the lunatic's estate. The matter having stood over, that the practice might be inquired into, Lord *Eldon*, C., said, that the only difficulty arose from the form of the petition; and that he found, where there is a mortgage and the mortgagee had become a lunatic, the usual course was for the mortgagor to state that he is willing to pay the money due on the mortgage to the committee, who then presents the petition for the reference; after he has put himself in a situation to be able to convey, the subsequent costs are defrayed by the mortgagor; but all the costs antecedent to the committee's having that capacity, were paid out of the lunatic's estate. In this case, the mortgagor presented the petition, which was the same thing, being one step towards giving the committee the capacity to convey, and the expense of it must fall on the lunatic's

(*g*) *In re Frank*, 24 July, 1829.

(*h*) *Ex parte Tutin*, 3 Ves. & Bea.

(*i*) See *Wetherell v. Collins*, 3 Madd. 255; *Martin's case*, 5 Bing. 160.

estate (*k*). It was true, that, in an action, the mortgagor might be made to pay the whole sum without any deduction, but the Court approved of an application of this sort on the part of the committee, instead of an action, which he would not be allowed to bring, if the mortgagor was ready to pay (*l*). It seems that the expense of proceedings under the stat. 11 Geo. 4 and 1 Wm. 4, c. 60, s. 5, for the purpose of obtaining a reconveyance of a mortgaged estate from a mortgagee of unsound mind, but not found such by inquisition, are to be borne by the mortgagor. In this case the general question did not arise, as there was a distinct understanding between the assignees of the mortgagor and the solicitor of the lunatic, that in consideration of the friends of the lunatic (the mortgagee) lending their assistance in prosecuting the inquiries under the reference made in pursuance of the 5th section of 11 Geo. 4 and 1 Wm. 4, c. 60, the whole of the expenses of putting the mortgagee in a capacity to reconvey should be borne by the assignees. Lord *Cottenham*, C., observed, that he had great difficulty in understanding the preceding case of *Ex parte Richards*, which when compared with the other cases which had been cited (*m*), would seem to make a difference between the case where a lunatic was a bare trustee, and one in which he was a mortgagee; and that being unable to see any solid ground for such a distinction, he should hesitate to follow the authority of that case whenever an opportunity for reconsidering the point should occur (*n*).

The infant heir of a mortgagee in fee, having been found by the Master, to be a trustee of the mortgaged estate, for the executor of the mortgagee, the executor petitioned that the infant might be ordered to convey the estate to the mortgagor, on payment of the principal and interest due on the mortgage, and costs; it was held that the costs of the proceeding before the Master must be paid by the mortgagor (*o*). A mortgagee,

(*k*) *Ex parte Richards*, 1 Jac. & Walk. 264.

(*l*) *Ibid*.

(*m*) *Ex parte Pearse*, Turn. & R. 325; *Ex parte Cant*, 10 Ves. 554; *Ex parte Tutin*, 3 Ves. & B. 149.

(*n*) *In re Marrow*, Craig & Phill.

142; see p. 146.

(*o*) *Ex parte Ommamey*, 10 Sim. 298; see *Midland Counties Railway Co. v. Wescomb*, 2 Railw. C. 211; 11 Sim. 57; *Ex parte Richards*, 1 Jac. & W. 264.

by improper and vexatious conduct, will, in some cases (as, a tender of the mortgage money and interest, and a refusal to receive it), not only be deprived of his own costs, but compelled to pay those of the mortgagor (*p*).

But, where the lunatic is a *bare trustee*, and has *no* beneficial interest in the money due on mortgage, the costs of the necessary applications and orders for obtaining a conveyance from his committee, must be paid by the persons beneficially interested, or by the mortgagor. Thus, where the Master, in a reference under 6 Geo. 4, c. 74, on the petition of the persons entitled to the equity of redemption of a real estate, had found by his report that a lunatic was a mortgagee of such estate as a trustee, and that he was seised thereof as a trustee for the purchaser of it—An order was made, that, upon payment of the principal and interest to the committee of the estate, such committee should convey the premises to such purchaser; and it was referred to the Master to tax the costs of the petitioners and of the committee of the estate of the lunatic, incurred by the petition for the order of reference, and the application to confirm the Master's report and the order to convey; and such costs were directed to be retained by the committee out of the principal money and interest to be received in respect of the mortgage (*q*). And where a petition was presented by a party entitled to the equity of redemption of a bond and heritable subjects in Scotland, which had been mortgaged to the lunatic's father, who, by his will, bequeathed the principal money to the petitioner, praying a confirmation of the Master's report, finding the lunatic a trustee within the 6 Geo. 4, c. 74, and that the committee of the lunatic might be ordered to execute a release of the mortgage to the petitioner accordingly, and that the costs of the petition, report, and application might be taxed and paid out of the personal estate of the testator, or out of the lunatic's estate—Lord *Lyndhurst*, C.,

(*p*) *Harvey v. Tebbutt*, 1 Jac. & Walk. 197; *Detillin v. Gale*, 7 Ves. 583; *Loftus v. Smith*, 2 Sch. & Lef. 657; — *v. Trecothick*, 2 Ves. & Bea. 181; *Quarrel v. Beckford*, 1 Madd. R. 269, 285; 1 Ball & B.

121, n.; *Dryden v. Frost*, 3 My. & Cr. 670; *Binnington v. Harwood*, Turn. & R. 477; *In re Walker*, Cr. & Ph. 150.

(*q*) *In re Tarbuck*, 17 July, 1829.

decided, that the lunatic ought not to bear any expense, as he took no beneficial interest, and was a mere naked trustee. His Lordship said, he never heard of a trustee being required to pay any expense for the transfer of property to another trustee ; and considered, that, whatever expenses might have been incurred for that purpose, must be paid by the parties requiring the transfer ; and he refused to make the order for payment of the costs out of the lunatic's estate (*r*).

And in another case, where, on the death of a mortgagee in fee, the legal estate in certain premises descended to his heir-at-law, but the mortgage debt went to the executors of the mortgagee ; the heir-at-law was of unsound mind, but no commission of lunacy had issued against him—The mortgagor presented a petition under 6 Geo. 4, c. 74 ; and the Master, under the usual reference, found that the heir-at-law was of unsound mind, and that he was seised of the mortgaged premises upon trust for the executors of the mortgagee, until the mortgage money and interest were paid, and, after payment thereof, in trust for the mortgagor, his heirs, and assigns, within the meaning of the act ; and he approved of one of the executors as a proper person to convey on behalf and in the name of the lunatic. The mortgagor then presented a petition, praying, that, upon the payment of the principal and interest due on the mortgage, the executor named might be appointed and ordered to convey the premises to the petitioner and his heirs. The executors were willing to receive their principal and interest, and the only question was, as to the costs of the proceedings and the petition—Lord *Lyndhurst*, C., said the jurisdiction of the Court is limited to the person petitioning and to the person found to be of unsound mind, either by inquisition or by the Master under a reference made in pursuance of the statute, and the Court has no authority to make an order affecting a person who is neither a petitioner nor a person of unsound mind, unless he consents. The Court cannot order these executors to pay costs, it cannot order them to receive the principal and interest due to them ; they are willing to be

redeemed upon payment of their costs; but the mortgagor must take the boon upon the terms offered. In *Ex parte Richards* (s), the lunatic was the person beneficially entitled to the mortgage debt, and the Court, by virtue of its jurisdiction in lunacy, had full authority to deal with his interest according to its discretion. The only other interest which existed there, was that of the mortgagor; and he, by preferring his petition, gave the Court jurisdiction. So, in *Ex parte Pearse* (t), the person of unsound mind was a trustee—first, for the grantee of an annuity, and then for the grantor; who having both concurred in a petition, Lord *Eldon* thought that the costs ought to be borne by them equally; but if the grantor had been the sole petitioner, the Court could have had no jurisdiction over the grantee, and could not have thrown upon him any portion of the costs. The Lord Chancellor ordered all the costs to be paid by the mortgagor, the petitioner (u).

By statute 11 Geo. 4 and 1 Wm. 4, c. 60, s. 25, it is enacted, that the Lord Chancellor, intrusted as aforesaid, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of that act, or any of them, to be paid and raised out of or from the land or stock, or the rents or dividends, in respect of which the same respectively shall be made, or in such other manner as the said Lord Chancellor shall think proper.

(s) *Ante*, p. 507.

(t) *Ante*, p. 507.

(u) *Ex parte Clay, In re Towers*,
7 Aug. 1830.

CHAPTER IX.

OF PROCEEDINGS AT LAW, BY AND AGAINST LUNATICS AND
THEIR COMMITTEES.SECTION I.—*Of actions by and on the behalf of lunatics.*II.—*Of proceedings at law against lunatics.*

SECTION I.

Of actions by and on the behalf of Lunatics.

IT was formerly held, that idiots, madmen, and such as were born deaf and dumb, were incapable of suing, on account of their want of reason and understanding; but actions can now be maintained in their names and prosecuted on their behalf (*a*). The committee of an idiot or lunatic being considered as a bailiff or servant, and having no interest, except for their benefit, cannot maintain an action on their behalf in his own name, but such action must be brought in the name of the *non compos*, as an action of trespass, debt, covenant, &c. An ejectment for lands belonging to a lunatic must be brought on his own demise (*b*).

If an idiot sue, it is said that he must appear in person; and any one who prays to be admitted as his friend, may sue for him: so, if an action be brought against him, he must appear in his proper person, and any one who can make a better defence shall be admitted to defend for him: but if an idiot has been allowed, however irregularly, to plead by attorney, and the parties proceed to trial, the verdict and judgment will be

(a) Co. Litt. 135, b.

Poph. 141; *Cook v. Darston*,(b) *Drury v. Fitch*, Hutt. 16;Brownl. & Goulds. 197; *Knipe v.**Cox v. Dawson*, Noy. 27; *Thorn v.**Palmer*, 2 Wils. 130.*Coward*, 2 Sid. 124; *Darcie's case*,

binding upon him; but a lunatic, or one who becomes *non compos mentis*, must appear by guardian if he be within age, and by attorney if he be of full age (c).

A party to whom a debt was owing having become *non compos mentis*, an action in his name was commenced by his wife; and the sum in dispute having been paid into Court, under a Judge's order, the Court ordered it to be paid out to the wife, although no commission of lunacy had been issued, and the attorney had received no instructions to bring the action from the plaintiff previous to his lunacy (d).

The committee of a lunatic ought, before bringing or defending an action on behalf of a lunatic to obtain the sanction of the Court. The costs incurred by a committee in an action brought without such sanction against one of the tenants of the lunatic's estate were disallowed (e).

It is the common practice, on the petition of the committee, to refer it to the Master to inquire whether it will be proper to commence an action on behalf of the lunatic, and, on his reporting in favour of a particular action, to direct the committee to commence it. Thus, an inquiry was directed to be made by the Master, whether proceedings ought to be instituted against a tenant for recovering compensation in damages for dilapidations which he had suffered of a messuage in his occupation belonging to the lunatic, in breach of the covenants contained in his lease (f). And in another case, an order was made, founded on the Master's report, that the committee of the lunatic's estate should be at liberty to bring actions of ejectment against such of the tenants of the estate mentioned in the report, of which the lunatic was seised as tenant in tail, as refused to attorn and pay rent to such committee (g).

It seems that a person may be held to bail upon the oath of the committee of a lunatic (h). And judgment was allowed to

(c) Brook's Abr. tit. Idiot; 4 Rep. 124, b; Co. Litt. 135, b., and note by Harg.; *Dennis v. Dennis*, 2 Saund. Rep. 328; *Dennis v. Phrasier*, 2 Keble, 691, 752; Bac. Abr. title "Idiots and Lunatics," (G).

(d) *Rock v. Slade*, 2 Jurist, 993;

7 Dowl. P. C. 22.

(e) *In re Notley*, 3 Jur. 719; ante, p. 250.

(f) *In re Buckle*, 13 Jan. 1830.

(g) *In re Lewis*, 16 June, 1829.

(h) *Stewart v. Graham*, 19 Ves.

315.

be entered on an old warrant of attorney, where the plaintiff, being a lunatic, did not swear that the money was unpaid, but another person did, who had received the interest upon the bond ever since the plaintiff had become lunatic (*i*).

It may be proper to observe in this place, that, where a man has been found a lunatic by inquisition in England, it will not enable the committee to sue for a debt owing to the lunatic in the Courts of Scotland, but the suit must be carried on there in the lunatic's own name; and that a *curator* of a lunatic's estate appointed in Scotland, cannot on that title maintain an action in England (*k*).

The writ of *habeas corpus* lies in all cases for inquiring into the cause of any person being deprived of his liberty; and therefore, where any person is confined as a lunatic, such writ may be obtained on proper affidavits, directing the person who has the custody of the alleged lunatic to bring him before the Court for examination as to the cause of his detention; but, if it appears by the affidavit of a physician or some competent person, that the party is actually a lunatic, and in such a state of mind as not to be fit to be taken out of the custody in which he has been placed, and more especially if a commission of lunacy is about to be issued to inquire of his lunacy, the Court will enlarge the time for the return of the writ according to the circumstances of the case (*l*). Before a writ of *habeas corpus* is granted in a case of this kind, a previous inspection by a medical man is sometimes directed (*m*).

Upon motion for a *habeas corpus* to bring up the body of a party who was confined in a lunatic asylum, the Court granted only a conditional rule; but ordered that a physician in the mean time, and at all reasonable times, should have free access to the alleged lunatic at such asylum, in the absence of the physician in whose care and custody he was. Upon shewing cause, it appeared that a commission of lunacy had issued

(*i*) *Coppendale v. Sunderland*, Barnes, 42.

(*l*) *Rex v. Clarke*, 3 Burr. 1362.

(*m*) *Rex v. Turlington*, 2 Burr.

(*k*) *Morison v. Earl of Sutherland*, 2 Vol. of Suppl to Dict. of Decisions, 199; see *ante*, p. 33.

115; *Rex v. Wright*, Id. 1099; *Rex v. Harty*, cited 1 Smith & Batty, 82.

against the party, upon which an inquisition was soon to be taken; and it not appearing satisfactorily from the affidavits that the party was free from derangement, the Court enlarged the time for shewing cause until the first day of the following Term, in order that the fact of the party being a lunatic or not might be ascertained under the commission (*n*).

The Court will refuse to grant liberty of access to, and inspection of, a lunatic, where the application comes from a party who has no pretence for demanding it (*o*).

If the party confined as a lunatic, upon being brought into Court, appears to be free from insanity, he ought to be set at liberty by the order of the Court (*p*). But, where the husband had confined his wife in a madhouse and she had still reason to be apprehensive of danger from him, the Court would not permit him to take her away, but allowed her to go to the house of a friend (*q*).

Where a person entitled to certain property on the death of a lady, a lunatic, in default of appointment, preferred a petition for liberty of access, either personally or by physicians, in order to ascertain whether she was in a state of mind competent to execute a valid appointment—Lord *Eldon* refused to make the order, as there was no instance of one having been made upon the principle of *quia timet*, and because such visit might be attended with dangerous consequences, by irritating the lady (*r*).

If the party to whom the writ of *habeas corpus* is directed omit to make any return, the Court will issue an attachment *nisi* without a previous rule to return the writ. Thus, where a *habeas corpus* was directed to a physician to bring up the body of a lunatic under his care, to which he made no return, and an attachment was moved for on an affidavit of service of the writ, the Court held that where the liberty of the subject is concerned, there ought to be all the expedition possible, and granted an attachment *nisi*, &c. Whereupon the physi-

(*n*) *Ex parte Carpenter*, 1 Smith and Batty, 81.

(*o*) *Rex v. Clarke*, 3 Burr. 1363.

(*p*) *Rex v. Turlington*, 2 Burr.

1115; see also 8 & 9 Vict. c. 100, ss. 76—80.

(*q*) *Rex v. Turlington*, 2 Burr. 1115.

(*r*) *Ex parte Lyttleton*, 6 Ves. 7.

cian returned, that, before the service of the writ, he had delivered the lunatic to her husband, and that he did not know where she was, nor could he produce her; and this was held a sufficient answer (*s*).

In a case where a lady just come of age, and entitled to considerable property under the will of her uncle, and to such further annual income, under another will, as the trustees should think proper to allow, had been decoyed away by a person who induced her to go to Gretna Green, where they went through the ceremony of marriage; and was afterwards taken from her husband, and placed under the care of some of her friends: when an application for a *habeas corpus* was made on behalf of her husband. It was contended, that she ought not to be brought up under the *habeas corpus*, because it appeared by the evidence of her mother, governess, and others, that she was a person of weak mind, and subject to violent fits of passion; and it was sworn by three medical men, who had known her from an early age, that she was a person of unsound mind, and utterly unable to take care of herself, and that they believed that she was totally incapable of understanding the nature of the marriage contract. The time for returning the writ was enlarged, and, in the mean time, two physicians named by the Chief Justice and the attornies on both sides, were to visit and examine the lady (*t*). Under such direction, the lady was visited by such physicians, who certified (amongst other things) that they had examined her for an hour and upwards, and were convinced that she was labouring under a very considerable degree of mental imbecility; that she had apparently no conception whatever of the great importance of the late transaction she had been engaged in, and expressed various doubts as to its nature; that she was perfectly indifferent and frivolously careless as to whom she lived with; and manifested so much indecision of character, that, though her imbecility did not amount to fatuity, yet her

(*s*) *Rex v. Wright*, 2 Str. 915. King's Bench, 3rd May, 1832.

(*t*) *Rex v. Kelly and Another*,

intellect was evidently so weak as to render her an easy victim of artful designs.

It was agreed and allowed by the Court, that the return to the writ should be, that the lady was not the wife of the party, in order that he might have an opportunity of *traversing such return*, and bringing the question of her sanity before a jury for their decision (*u*). It may be observed, that, by stat. 56 Geo. 3, c. 100, s. 3, power is given to the Judges before whom a writ of *habeas corpus* is returnable, to inquire into the truth of the facts set forth in the return.

Before any further proceedings had been taken in the above case, an application was made to the Lord Chancellor for a commission of lunacy against the lady, under which she was found to be a lunatic.

A medical man is not warranted, merely on statements made by the relations of a person supposed to be insane, in sending men to take him into custody and confine him, unless he is satisfied, from those statements, that such a step is necessary, to prevent some immediate injury being done by the individual, either to himself or to other persons; and, if access cannot be had for the purpose of examination, application should be made to the Lord Chancellor, that the party may be taken up under his authority.

In an action of trespass, for assaulting and imprisoning the plaintiff, and forcing him to go along certain public streets, to which the defendants pleaded *not guilty*. It appeared that the plaintiff was a gentleman of property, but of very parsimonious and eccentric habits, and resided in a small house in York-street, Lambeth. The first defendant was an eminent physician, well known in that part of the medical profession whose practice is confined to cases of insanity; and the facts, as far as related to the assault and imprisonment, were as follows:—About six o'clock in the evening of the 1st November, 1829, two men (who were the other defendants) went to the plaintiff's house, and induced him to come out, laid hold of him,

(*u*) Ib. 11th May, 1832.

and told him that he must go with them. He refused to go, and called to some of his neighbours who were passing, to come to his assistance. They did so, and questioned the men as to their authority. They said they had authority, and produced a paper, purporting to be signed by the physician, “authorizing the bearer to take charge of the plaintiff, and confine him to his own house, he being insane.”

The bystanders remonstrated with the men, who said they did not want to use the plaintiff ill, but would take him and use him as a gentleman,—they would take him either to his own house or to an hotel. He refused to go anywhere with them, and resisted their attempts to move him. Upon which, one of them who carried a bag, told him that if he was not quiet, they had implements in that bag which would make him so. He got away, by a violent effort, from the man with the bag, and the watch coming up, all the parties went before the constable; and the matter being investigated, ended in the plaintiff's being set at liberty, and the two men committed to the watchhouse, to be taken before the magistrate next day. The bag was examined by the constable, and found to contain screws, straps, a strait waistcoat, &c. On the investigation next day, at Union Hall, the physician admitted that the men acted by his authority, and that he had never seen the plaintiff; and, in answer to a question by the magistrate, he said, that it was usual to act if the friends applied, without having seen the person (v). Lord *Tenterden*, C. J., (in summing up) said—“It is admitted on both sides that your verdict must be for the plaintiff, and the only question is, as to the amount of damages which you are to give; and, with respect to this point, it is material to consider that the plaintiff was taken on suspicion of his being insane. Certainly, the course taken by the doctor has been such as cannot by law be justified. He ought not to have sent two men with such instruments as these appear to have been sent with, merely upon statements made by relations, unless those statements were such as to satisfy him that those steps were necessary to prevent the party from

doing some immediate injury either to himself or others. From the statement made by the doctor, when the parties were before the magistrate, it seems that it is usual, on the application of the family, to act in this manner. I confess I am sorry to hear it so said, for it certainly is not right; and although there may be difficulty in getting access to a party labouring under insanity, yet the proper course is, if access cannot be obtained, to apply to the high authority, which has cognizance over such matters, to get the party taken up, in order that he may be examined. The question for your consideration, under all the circumstances, will be, whether there was reasonable and probable cause for the plaintiff's brothers to consider him as insane, and whether, in consequence of their so considering him, they made the application to the doctor; for, if such should be your opinion, probably you will not go very high in your estimate of the damages." The jury gave a verdict for the plaintiff—damages 500*l.* (*w*).

By a local act, persons were compelled, under a penalty, to perform the duties of overseers, and no action was to be commenced against any person, for anything done in pursuance of the act, until twenty-one days' notice in writing had been given. The defendants, as overseers appointed under the act, had assented to the imprisonment of a party in a workhouse who was incorrectly supposed to have been a pauper and a lunatic. They had intended to act under 9 Geo. 4, c. 40, s. 38, but had not complied with its provisions. It was held that this was not a thing done in pursuance of the local act, and that the overseers were not, therefore, entitled to notice. (*x*)

In trespass against several defendants, where all are implicated in one joint act of trespass, the damages must be assessed against all jointly, although all may not have been equally culpable (*y*).

An action will lie against a person for maliciously, and without any reasonable or probable cause, having signed a

(*w*) *Anderdon v. Burrows* and Others, 4 Carr. & Payne, 210—214. N. S., C. P. 136; 1 C. B. 18.

(*y*) *Ib.*

(*x*) *Elliot v. Allen*, 14 Law J.

certificate, that a person was insane, and in a state requiring to be confined, in consequence whereof a party has been seised and detained in custody as a lunatic; or, such a certificate might be considered as a libel, in which case an indictment would lie against the person who signed it.

An action for an assault and false imprisonment may be maintained by a person who is improperly taken and detained in custody as a lunatic. In answer to such an action the defendant may plead, as a justification, that the plaintiff was a dangerous lunatic, and committed to his care under the certificate of medical men (z). In such cases it is for a jury to decide, whether or not the party who has signed the certificate or detained another in custody, is justified in adopting such steps, which will depend upon whether the party was insane or not at the time. But the keeper of an asylum for lunatics is not justified in receiving a person into his custody, although decidedly insane, without the certificate required by the statute (a).

Until the recent statute, 8 & 9 Vict. c. 100, in all proceedings upon writs of *habeas corpus*, and in all actions and other proceedings against any person for confining any persons insane, or alleged to be insane, the parties complained of were obliged to justify their proceedings according to the common law (b). But now the proprietors and superintendents of a licensed house or registered hospital, and every person authorised to receive a lunatic upon an order, may, on having the necessary order and certificates, take and detain a lunatic, and in actions against them for taking or confining a person as a lunatic the party complained of may plead such order and certificates in justification of such taking or confinement (c).

An action against any person for any thing done under 8 & 9 Vict. c. 100, or any of the acts thereby repealed are to be commenced within twelve calendar months next after *the*

(z) *Chawner v. Warburton*, tried before Lord *Ellenborough*, in the Court of King's Bench in July, 1813; see *Annual Register* for 1813, p. 284.

(a) 8 & 9 Vict. c. 100, ss. 45—48; *Ib.* c. 126, ss. 48, 49, 51, 52; see *post*, Chap. xii. s. 2.

(b) 2 & 3 Wm. 4, c. 107, s. 55.

(c) 8 & 9 Vict. c. 100, s. 99.

release of the party bringing the action, and to be laid in the county or borough where the cause of action arose (*d*).

The defendant may plead specially, or the general issue not guilty, and may give that act and the special matter in evidence, and that the same was done under that act (*e*).

An action will lie for maliciously suing out a commission of lunacy against a person; but to support an action for a conspiracy in issuing a commission of lunacy, malice, and a want of probable cause, must be proved. On proof of a total want of probable cause, malice may be implied; but, although express malice be proved, some slight evidence of a want of probable cause must be given (*f*); and it seems that such an action cannot be sustained, unless it be shewn that the commission had been superseded, or that the party had been found by the inquisition to be of sound mind (*g*).

In the case of the *The King v. Harvey and Chapman* (*h*), it was held to be an indictable offence to publish falsely of the King, or of any other person, that he laboured under mental derangement. At the trial, the libel was proved in the usual manner, and it was admitted by the counsel for the defendants, that the libel imputed that the King laboured under insanity, and that the assertion was untrue; but it was urged to the jury, that the defendants believed the fact to be true, and that they were warranted in so doing by rumours which had been prevalent on the subject. The Lord Chief Justice, in his address to the jury, after stating the import of the publication, proceeded as follows:—"To assert falsely of his Majesty, or of any other person, that he labours under the affliction of mental derangement, is a criminal act. It is an offence of a more aggravated nature to make such an assertion concerning his Majesty, than concerning a subject, by reason of the greater mischief that may thence arise. It is distinctly admitted by

(*d*) *Ib.* s. 105.

(*e*) *Ib.*

(*f*) *Turner v. Turner*, 1 Gow, N. P. 20.

(*g*) See *Whitwell v. Hall*, 2 Barn. & Adolph. 695; *Matthews v. Dick-*

enson, 7 Taunt. 399; *Kemp v. King*, 1 Carr. & M. 396; *Atkinson v. Raleigh*, 3 Q. B. 79.

(*h*) 2 Barn. & Cress. 257; 3 Dow. & Ryl. 464.

the counsel for the defendants, that the statement in the libel was false in fact, although they assert that rumours to the same effect had been previously circulated in other newspapers. Here the writer of this article does not seem to found himself upon existing rumours, but purports to speak from authority; and inasmuch as it is now admitted that the fact did not exist, there could be no authority for the statement. In my opinion, the publication is a libel calculated to vilify and scandalize his Majesty, and bring him into contempt among his subjects. But you have a right to exercise your own judgment upon the publication, and I invite you to do so." The jury found the defendants guilty. A person who publishes that which is calumnious concerning the character of another, must be presumed to have intended to do that which the publication is necessarily and obviously calculated to effect, unless he can shew the contrary; and the *onus* of proving it lies upon him (*i*).

By the statute 21 Jac. 1, c. 16, *twenty years* was the time of limitation in any writ of *formedon*; and consequently twenty years was also the limitation in every action of ejectment, for no ejectment can be brought unless the lessor of the plaintiff is entitled to enter on the lands; and by that statute no entry can be made, unless within twenty years after the right shall accrue. If a right of entry accrued to a person whilst *non compos mentis*, and he afterwards died under disability, his heir might, notwithstanding, have entered (*k*); for the right of a *non compos* was not prejudiced by the laches of himself or those acting on his behalf. It is provided by the second section of the above act, "if any person or persons that shall be entitled to any such writ or writs, or that shall have such right or title of entry, shall be, at the time of the said right or title first descended, accrued, come, or fallen, within the age of one-and-twenty years, *feme covert*, *non compos mentis*, imprisoned, or beyond the seas, that then such person and persons, and his and their heirs, shall or may, notwith-

(*i*) *Rex v. Hurvey and Chapman*,
2 B. & C. 257; S. C. 3 Dowl. &
Ryl. 464; and see *Rex v. Sir F.*
Burdett, 4 Barn. & Ald. 95.

(*k*) Litt. s. 405; 4 Rep. 125;
Gilb. Ten. 53, Watk. ed.; *Burcher's*
case, Hob. 137.

standing the said twenty years be expired, bring his action or make his entry as he might have done before this act; so as such person and persons, or his or their heir or heirs, shall, within ten years next after his and their full age, discoverture, *coming of sound mind*, enlargement out of prison, or coming into this realm, or death, take benefit of and sue forth the same, and at no time after the said ten years." By the Irish statute, 10 Car. 1, s. 2, c. 6, no person could enter on lands except within twenty years after his right accrued; there is a saving of ten years in favour of a *non compos*, or his heir, after coming of sound mind.

The ten years did not run at all while there was a continuance of disabilities, but they ran without intermission from the time that the disabilities first ceased (*l*). This proviso of the statute had been construed to mean that the heir of every person, to whom a right of entry had accrued during any of the disabilities there stated, should have ten years from the death of his ancestor to whom the right *first* accrued during the period of disability, and who died under such disability (*m*). And such clause extended only to the persons on whom the right *first* descended; and, when the statute had once begun to run, no subsequent disability would prevent its operation (*n*). And there was no distinction in that respect between the heir of one seised in fee, and the heir of a donee in tail (*o*).

Limitation of actions and suits relating to real property.—Very important alterations have been made in the law respecting the limitation of actions and suits relating to real property, and interests connected with it, but on this occasion it will be sufficient to state the new provisions very generally,[§] and to refer to works in which the subject is more fully treated (*p*).

No person shall make an entry or distress or bring an action to recover any land or rent, but within twenty years next after

(*l*) *Cotterell v. Dutton*, 4 Taunt. 825.

(*m*) *Doe v. Jesson*, 6 East, 80.

(*n*) *Doe d. Duroure v. Jones*, 4 Term Rep. 310; and see *Sturt v. Mellish*, 2 Atk. 610, 614.

(*o*) *Tolson v. Kaye*, 3 Brod. & Bing.

217; 7 Scott, N. R. 222, 6 Man. & G. 536; see *ante*, p. 319—321.

(*p*) See Sugden's V. & P. pp. 608—647, 11th ed.; Hayes' Introduction to Conveyancing; Shelford's Real Property Statutes, pp. 104—269, 4th ed.

the time at which the right to make such entry or distress, or to bring an action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action shall have first accrued to the person making or bringing the same (*q*).

The act points out the time when the right shall be deemed to have first accrued in the case of an estate in possession—on dispossession—on abatement or death—on alienation—in the case of future estates, and in the case of forfeiture or breach of condition (*r*). When advantage of a forfeiture is not taken by a remainder man, he will have a new right when his estate comes into possession (*s*). A reversioner is also to have a new right when his estate comes into possession (*t*).

Where rent amounting to 20s. reserved by a lease in writing shall have been wrongfully received, no new right is to accrue on the determination of the lease (*u*). The possession of one coparcener, joint tenant or tenant in common, is not to be deemed the possession of the others (*v*). The possession of a younger brother or other relation is not to be considered as the possession of the heir (*w*). An acknowledgment in writing given to the person entitled, or his agent, is equivalent to possession or receipt of rent (*x*). Where possession was not adverse on the 24th July, 1833, the right was not barred until the end of five years afterwards (*y*).

Saving in favour of persons under disabilities.—"If at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned; that is to say, infancy, coverture, idiocy, lunacy, unsoundness of mind, or absence beyond seas, then such person, or the person claiming

(*q*) 3 & 4 Wm. 4, c. 27, s. 2. It is necessary to bear in mind, the first section of this act which contains an interpretation of certain words used in it.

(*r*) 3 & 4 Wm. 4, c. 27, s. 3.

(*s*) *Ib.* s. 4.

(*t*) *Ib.* s. 5.

(*u*) *Ib.* s. 9.

(*v*) *Ib.* s. 12.

(*w*) *Ib.* s. 13.

(*x*) *Ib.* s. 14.

(*y*) *Ib.* s. 15.

through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability, or shall have died which shall have first happened" (y).

No entry, distress, or action shall be made or brought by any person, who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired (z).

When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person (a).

No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress, or brought an action to

(y) 3 & 4 Wm. 4, c. 27, s. 16.

(z) 3 & 4 Wm. 4, c. 27, s. 17;

see *Doe d. Corbyn v. Bramston*, 3

Ad. & E. 63, 4 Nev. & M. 664; see

Jumpson v. Pitchers, 13 Sim. 327;

1 Coll. C. C. 13.

(a) 3 & 4 Wm. 4, c. 27, s. 18.

recover the same respectively, if he had been entitled at law to such estate, interest, or right in or to the same, as he shall claim therein in equity (*b*).

In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser. In cases of fraud no time shall run whilst the fraud remains concealed; and the jurisdiction of equity, on the ground of acquiescence or otherwise, is saved (*c*).

A. T., a person of unsound mind, living in the family of M. D., became entitled as heiress-at-law to certain lands. M. D. received the rents and profits of such lands for thirty years during the life of A. T., and eleven years after her death, when M. D. died. M. D. had procured A. T. to execute a will devising part of her estate and also indentures for conveying other parts to M. D. and her heirs. It was held that M. D. had founded her title upon the instruments which she had procured A. T. to execute in her favour; that her claim to the lands in question must be deemed to be under and not against A. T., and that there was therefore no adverse possession as against A. T., or those claiming under her—That procuring instruments of conveyance and a devise to be executed by a person of unsound mind, was a fraud within the statute 3 & 4 Wm. 4, c. 27, s. 26. That after issues had been directed, on motion, to try the validity of the instruments executed by A. T., and whether she was of sound mind, the order being submitted to, it was no longer open to those claiming under M. D. to insist at the hearing that the claim of the heirs of A. T. was barred, by the Statute of Limitations, 3 & 4 Wm. 4, c. 27 (*d*).

It appears to be doubtful how far the Statute of Limitations will be available in answer to a suit against the lunatic's representatives in respect of a debt which the creditor had failed to establish in the lunatic's lifetime under an order in lunacy. In 1823, an action was brought upon a promissory note, and the debtor was arrested. Soon afterwards the debtor was declared

(*b*) *Ib.* s. 24.

(*d*) *Lewis v. Thomas*, 3 Hare, 26.

(*c*) *Ib.* ss. 25, 26, 27.

a lunatic; and in 1825, he, by his committees, filed a bill to restrain the action. In July, 1825, an arrangement was made, and carried into execution by an order of the Court of Chancery, whereby the action was stayed, and the creditor was to establish, and did proceed to establish his debt under the lunacy. In 1843, however, and before the Master, acting in the lunacy, had made any report as to the creditor's claim, the lunatic died. The creditor then filed his bill against the lunatic's executors. The defendant's demurrer for want of equity was overruled, without prejudice to any question which might be made at the hearing of the cause, the Court having no judicial knowledge of the effect of the death of the lunatic upon the proceedings in lunacy (*e*).

A mortgagor is to be barred of his right of redemption, at the end of twenty years from the time when the mortgagee took possession, or from the last written acknowledgment (*f*).

No writs therein mentioned, including writs of *formedon*,

(*e*) *Rock v. Cooke*, 1 Coll. C. C. 477; see *ex parte M'Dougal*, 12 Ves. 384; *ante*, p. 24.

(*f*) 3 & 4 Wm. 4, c. 27, s. 28.

The rule as to twenty years barring the right of redemption before this act was subject to the exceptions of the party being under the disabilities of infancy, coverture, or beyond the sea; *Reeks v. Postlewaite*, Coop. C. C. 169; *Beckford v. Wade*, 17 Ves. 89—93; in which case they were allowed, by analogy to the statute of the 21 Jac. 1, c. 16, s. 2, ten years to claim after their removal; see *ante*, pp. 521, 522. Thus, where the husband and wife, jointly entitled to an equity of redemption in fee, conveyed it by deed without fine to the mortgagee in possession, it was held that the wife, or her heir, might redeem at any time within twenty years after the husband's death. *Price v. Copner*, 1 Sim. & Stu. 347.

It will be observed, that the above clause in the stat. 3 & 4 Wm. 4, c. 27, s. 28, does not contain any saving in favour of persons under disabilities, and it will, therefore, admit of doubt whether twenty years' possession of a mortgagee, without any written acknowledgment given to the mortgagor, will not bar the latter, although he may be a lunatic. See *Raffety v. King*, 1 Keen, 601; *Harrison v. Hollins*, 1 Sim. & Stu. 471.

An acknowledged account prevented the possession of the mortgagee from barring the right of the mortgagor to redeem; but the delivery of an account without any authority, by a receiver and manager of an estate belonging to a person of *unsound mind*, was held not to bind the latter, and redemption of the estate was refused. *Barron v. Martin*, Coop. C. C. 189.

dum fuit non compos mentis, and no other action real or mixed (except a writ of right of dower, or writ of dower *unde nihil habet*, or a *quare impedit*, or an ejectment), and no plaint in the nature of such writ or action (except a plaint for freebench or dower), shall be brought after 31st December, 1834 (*g*).

No action or suit, or other proceeding, shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given (*h*).

Limitation of action of debt on specialties, &c.—All actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debt or *scire facias*, upon any recognizance, must be brought within twenty years after the cause of such actions, all actions of debt upon any award, where the submission is not by specialty, or for any fine due in respect of any copyhold estates, or for an escape, or for money levied on any *feri facias*, within six years after the cause of action, and all actions for penalties, damages, or sums of money, given to the party grieved, by any statute then or thereafter to be in force, shall be brought within two years after the cause of action. This act does not extend to any action given by any statute where the time for bringing such action is or shall be by any statute specially limited (*i*).

(*g*) 3 & 4 Wm. 4, c. 27, s. 36.

(*h*) *Ib.* s. 40.

(*i*) 3 & 4 Wm. 4, c. 42, s. 3; 3 & 4 Vict. c. 105, s. 32, Ireland; see

5 & 6 Vict. c. 97, s. 5, as to the general limitation of actions under local and personal acts.

The stat. 3 & 4 Wm. 4, c. 42, s. 3, constitutes a bar to an action on a writing obligatory in those cases only where every breach of the condition has taken place more than twenty years previous to the commencement of the suit (*k*).

If any person or persons, entitled to any such action or suit, or to such *scire facias*, shall be, at the time of any such cause of action accrued, within the age of twenty-one years, *feme covert*, *non compos mentis*, or beyond the seas, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to or being of full age, discoverd, of sound memory, or returned from beyond the seas, as other persons having no such impediment should, according to the provisions of that act, have done; and that if any person or persons, against whom there shall be any such cause of action, shall be at the time such cause of action accrued, beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited, after the return of such person or persons from beyond the seas (*l*).

If any acknowledgment shall have been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, the person or persons entitled to such actions may bring his or their action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such acknowledgment, by writing or part payment, or part satisfaction, as aforesaid; or in case the person or persons entitled to such action shall, at the time of such acknowledgment, be under such disability as aforesaid, or the party making such acknowledgment be, at the time of making the same, beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond seas, as the case may be; and the plaintiff or plaintiffs in any such action, on any indenture, specialty, or recognizance,

(*k*) *Sanders v. Coward*, 10 Jur. 186.

(*l*) 3 & 4 Wm. 4, c. 42, s. 4; 3 & 4 Vict. c. 105, s. 33, Ireland.

may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of that statute (*m*).

The act 2 & 3 Wm. 4, c. 71, limiting the time for establishing rights of common and profits *a prendre* from land (except tithes and rent), claims of right of way or other easements, and of the enjoyment of light, contains a proviso that the time during which any person otherwise capable of resisting any such claims shall have been or shall be an idiot, or *non compos mentis* shall be excluded, in the computation of the periods therein mentioned, except where the right or claim is thereby declared to be absolute and indefeasible (*n*).

There is a similar proviso in the act for shortening the time required in claims of *modus decimandi*, or exemption from or discharge of tithes (*o*).

By the third section of the statute 21 Jac. 1, c. 16, all actions of trespass *quare clausum fregit* or otherwise, detinue, trover, account, and case, (except upon accounts between merchants), debt on simple contract, or for arrears of rent, are limited to six years after the cause of action accrued; and actions of assault, menace, battery, mayhem, and imprisonment, must be brought within four years, and actions for words within two years, after the injury committed. And by the seventh section of that act, it is provided, "that if any person or persons that shall be entitled to any such action of trespass, detinue, action *sur* trover, replevin, actions of account, actions of debt, actions of trespass for assault, menace, battery, wounding, or imprisonment, actions upon the case for words, shall be, at the time of any such cause of action given or accrued, fallen or come within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond seas, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full of age, of *sane*

(*m*) 3 & 4 Wm. 4, c. 42, s. 5; 1—27, 4th ed.
 3 & 4 Vict. c. 105, s. 34, Ireland. (*o*) 2 & 3 Wm. 4, c. 100, s. 6;
 (*n*) 2 & 3 Wm. 4, c. 71, s. 7; see see Shelford on Tithes, 391—398
 Shelford's Real Property Statutes. 3rd ed.

memory, at large, and returned from beyond the seas, as other persons having no such impediment should have done."

By the fourteenth and seventeenth sections of the Irish statute 10 Car. 1, sess. 2, c. 6, the period of limitations in personal actions is the same in Ireland as in England, and contains a similar proviso in favour of persons under disabilities. By the Irish statute, 8 Geo. 1, c. 4, s. 2, in any action or suit for the recovery of any debt by bill, bond, or other specialty, where no action or suit has been prosecuted, nor interest paid within twenty years, the defendant may plead payment in bar: there is a saving in favour of any person *non compos mentis*, commencing his action within five years after the removal of such disability (*p*).

If a person abroad, of non-sane memory, comes into this kingdom and then goes abroad again, his non-sane memory continuing, his privilege as to being out of the kingdom is gone, but that as to non-sane memory will begin to run from the time he shall return to his senses (*q*).

When the plaintiff would excuse himself for not commencing his action in time, by reason of his being under either of the disabilities mentioned in the statute, such disability must be specially stated in the replication; and it must be added, that the action was commenced within six years after the removal of it: and if the disability be traversed, the plaintiff must prove the existence and continuance of it (*r*). But the existence of any of the above disabilities does not prevent the right of suing during their continuance (*s*).

By statute 4 Anne, c. 16, s. 17, all suits and actions in the Court of Admiralty for seamen's wages, must be commenced within six years after the cause of suit or action arose. By the eighteenth section of that act, it is provided, if any persons, who shall be entitled to any such suit or action, shall be, at the time of any such cause of suit or action, *non compos mentis*,

(*p*) See *Farran v. Beresford*, 10 Cl. & Fin. 319; Shelford's Real Property Statutes, 249, 250, 4th ed.

(*q*) *Sturt v. Mellish*, 2 Atk. 614.

(*r*) Peake on Evidence, p. 275;

13 East, 439.

(*s*) *Strithorst v. Græme*, 3 Wils. 145; *Chandler v. Vilett*, 2 Saund. R. 121 a, n. 5.

that then such persons shall be at liberty to bring the same actions, within six years after being of *sane memory*.

A. kept cash with B., a banker, and the balances to his credit were stated from time to time in a pass book. A. became a lunatic, and was so found by inquisition, but the accounts continued to be kept with his family in the pass-book, the entries in which were in B.'s handwriting; a balance was stated to the credit of A., it was held that this was not evidence to support a count on an account stated with A. in an action brought by his representative against B. to recover the amount of such balance. There was no evidence of any accounting with the lunatic, who was not competent to appoint an agent, nor with any person competent to state an account on behalf of the lunatic (*t*).

The general rule of law is, that all sales in open market shall be good, not only between the parties, but as to all other persons. Sales in market *overt*, by a stranger, will bind an infant, or *feme covert*, having interest in the goods, either in their own right, or as executors or administrators; and it will also bind *idiots*, persons *insane*, beyond the sea, or in prison (*u*).

It is well known, that, before a policy of insurance upon a life is effected, it is usual for the party whose life is insured to subscribe a written declaration, as to his state of health, and the diseases with which he may have been afflicted. This declaration is incorporated in the policy by reference, with a proviso making it void, if (amongst other things) the insured be afflicted with any disorder tending to the shortening of life, or in case the declaration should contain any averment which is not true (*v*).

In effecting a policy of insurance, the party is bound to disclose every material fact within his knowledge, whether he believes such fact to be material or not; and it seems that weakness of mind should be communicated, the state of the

(*t*) *Tarbuck v. Bispham*, 2 Mees. Agency, 5—8; *post*, p. 550.
 & Wels. 2; see *Stead v. Thornton*, (*u*) 2 Inst. 713; and see Long on
 3 B. & Ad. 357, n.; *Stephens v. Bad-* Sales of Personal Property, p. 103.
cock, 1b. 361; Story's Law of (*v*) See Selw. N. P. p. 1040, 8th ed.

intellect, especially as connected with the state of the speech, is most important. Mr. Justice *Littledale* observed, with regard to the question whether it is necessary or not to state whether the mind is affected, "Perhaps it is not; but if the affection of the mind be connected with any affection of the body, it is certainly necessary to state it" (*w*).

In another case, on the assignment of a lease for lives, a new life was added, and the party beneficially interested in the lease insured the life of his nominee in the Globe Assurance Office; and, on his death, the trustees of the office refused to pay the sum insured, on the ground that at the time the policy was effected the nominee was known to be deranged. After much evidence had been gone into, as to the state of the nominee's mind before, and at the time of the insurance, a verdict was given for the sum insured, after deducting the premiums which had been paid into Court (*x*).

The majority of the Judges (*Pollock*, C. B., dissenting) held upon a proviso, making a policy of insurance void if the insurer should die by duelling, or by the act of justice, or should commit suicide, that the word suicide included all cases of voluntary self-destruction whether the party was sane or not (*y*).

SECTION II.

Of Proceedings at Law against Lunatics.

ALTHOUGH a *non compos* is not liable to the ordinary punishment for crimes (*a*), yet, if he commit a trespass against the persons or property of others, or do them bodily injury, he is compellable to make satisfaction in damages, to be recovered

(*w*) *Lindenau v. Desborough*, 3 Mann. & Ryl. 45—57; see 2 Marshall on Insurance, p. 772—775, 3rd ed.; 4 Bing. 60.

(*x*) *Sweete v. Fairlie and Others*,

K. B. 28th Feb. 1833.

(*y*) *Clift v. Schwabe*, 16 June, 1846, Exch. Ch., *ante*, p. 67.

(*a*) See *post*, Chap. xii. sect. 1.

by a civil action; for, in such cases, the intention is immaterial, if the act done be prejudicial (*b*).

It seems, that if the defendant in *quare impedit* be a lunatic, the action is properly brought against him, and not his committee (*c*).

The Courts of common law will not discharge a defendant who has been arrested out of custody on filing common bail, on the ground that he was insane at the time of the arrest (*d*), or afterwards became so (*e*); nor will they discharge his bail, on the ground of the insanity of their principal, although a commission of lunacy may have issued against him, under which he has been found a lunatic (*f*). The Court also refused to enlarge the time for the bail to render their principal, on an affidavit, that he was a lunatic, it not appearing that he was in such a state as to occasion any immediate peril of life, either to himself or those about him (*g*). The bail, however, may have a writ of *habeas corpus*, directed to a keeper of a lunatic asylum, to bring up their principal, notwithstanding his lunacy, in order to surrender him in their discharge, to the warden or marshal of the prison (*h*). A lunatic may be brought up by *habeas corpus ad justificandum*, on affidavit that he is not a dangerous lunatic, and is in a fit state to be brought up (*i*). But where the return to a writ of *latitat* stated that the defendant was insane, and could not be removed without great danger, and continued so till the return of the writ, the Court of King's Bench refused an attachment against the sheriff, and left the party to his remedy by action (*k*).

If a *non compos* defendant be within the power of another

(*b*) See 2 East, Rep. 104; *Weaver v. Ward*, Hob. 134; Bac. Abr. tit. Idiots and Lun. (E); 2 Roll's Abr. 547, pl. 4; Bacon's Elements of the Laws of England, p. 31; 1 Hale's P. C. 16.

(*c*) *Tyrell v. Jenner*, 3 M. & P. 648; 6 Bing. 283.

(*d*) *Nutt v. Verney and Others*, 4 Term Rep. 121.

(*e*) *Kernot and Another v. Norman*, 2 Term Rep. 390.

(*f*) *Ibbotson v. Lord Galway*, 6 Term Rep. 133; *Steel v. Alan*, 2 Bos. & Pull. 362; see *ante*, pp. 458, 459.

(*g*) *Cock v. Bell*, 13 East, 355; and see 2 Chitty's Rep. 104.

(*h*) *Pillop v. Sexton*, 3 Bos. & Pull. 550.

(*i*) *Fennell v. Tait*, 5 Tyr. 218, 1 C., M. & R. 584.

(*k*) *Cavenagh v. Collett*, 4 Barn. & Ald. 279.

person, who prevents access to him, a rule may be made, that service of the declaration, and also of the rule, upon such person, shall be good service on the *non compos* (l). Where the tenant of lands is a lunatic, a declaration in ejectment may be served on the person who has the care of the lunatic's person and the management of his affairs, although it does not appear that such person has been appointed a regular committee; and the Court will grant a rule *nisi* for judgment; and such rule may be to shew cause generally; and it is not necessary that it should be directed to any particular person (m).

Judgment cannot be signed against the casual ejector in respect of a service on the daughter carrying on a business of the tenant in possession who is a lunatic, and confined away from the premises, the service should have been made on the lunatic himself (n).

Service on the wife of a lunatic on the premises, the doctor having refused the party serving permission to see the lunatic himself, is sufficient for a rule absolute for judgment against the casual ejector.

Where the tenant was a lunatic, and was not permitted by the keeper of the lunatic asylum to be seen, and service of the declaration had been effected on his sister-in-law on the premises, and also on the keeper of the lunatic asylum, the Court granted a rule *nisi* for judgment against the casual ejector (o).

The Court will not authorize the plaintiff to enter an appearance under the statute 2 Wm. 4, c. 39, s. 3, where the defendant is a lunatic, and personal service of the distringas cannot be effected, unless they are satisfied that the keeper's attention has been drawn to the notice at the bottom of the writ, and its nature and object explained to him (p).

The defendant being a lunatic, the Court granted a rule *nisi*

(l) *Doe v. Roe* d. *Wright*, Barnes, 190.

(m) *Doe* d. Lord *Aylesbury v. Roe*, 2 Chitty's R. 183.

(n) *Doe* d. *Brown v. Roe*, 6 Dowl. P. C. 270; 1 W. W. & H. 86.

(o) *Doe* d. — v. *Roe*, 7 Jur. 725.

(p) *Spiller v. Benson*, 13 Law J. N. S. 114, Exch.; *Humphreys v. Griffiths*, 6 Mees. & W. 89.

for a writ of *distringas*, to compel an appearance upon an affidavit, stating that two calls had been made at the house where he resided, when the party was informed, that he could see neither the defendant nor the keeper, and on the last occasion had stated to the servant the object of his visit, and left a copy of the writ with him (*q*).

The keeper of a lunatic having refused to allow the lunatic to be served with a writ of summons, the Court granted a rule for a *distringas* to be served in the first instance upon the friends of the lunatic, and if they could not be found, upon the keeper (*r*).

On motion for a *distringas* to compel appearance, it appeared that the defendant was a lunatic, and an inmate of St. Luke's Hospital. The deponent had called at his dwelling-house, where his wife was still carrying on his business; he had also frequently called at St. Luke's, but had been refused admission to the defendant; and had left a copy of the writ of summons with the governor. The writ was granted to be served upon the wife of the lunatic (*s*).

When actions have been commenced against lunatics, so found by inquisition, the Lord Chancellor, on the petition of their committees, shewing that there are grounds for defending them, will refer it to the Master to inquire whether it will be proper to make any and what defence. In a case, where a traverse of the inquisition was pending, the Lord Chancellor declared that the committees were at liberty to defend an action against the lunatic; but that, during that time, he had no authority to make any order as to the costs (*t*).

It is laid down that if an idiot, after having been so found by office, be sued in any action upon a bond or writing executed by him, he cannot plead his *idiocy*, but a writ of *supersedeas*, suggesting the inquisition, shall be sent to the Judges (*u*).

(*q*) *Banfield v. Darell*, 13 Law J. N. S. 202, Q. B.; see *Starkie v. Skilbeck*, 6 Dowl. 52, 2 Jur. 255; *Jones v. Evans*, 8 Dowl. 435, 4 Jur. 434, *Anon.* 6 Jur. 37.

(*r*) *Branson v. Moss*, 6 Mees. &

W. 420, 8 Dowl. P. C. 412.

(*s*) *Limbert v. Hayward*, 13 Mees. & W. 480, 2 Dowl. & L. 406.

(*t*) *In re Sir G. O. P. Turner*, 12 November, 1824.

(*u*) 4 Rep. 126 b.; Show. P. C. 153.

Generally speaking, Courts of equity will not interfere to restrain proceedings at law against lunatics, merely on the ground of their mental incapacity (*v*).

The mode in which persons of unsound mind may take advantage of the act for the relief of insolvent debtors is prescribed by 1 & 2 Vict. c. 110, s. 102 (*w*).

(*v*) See *post*, Ch. x. s. 2.

(*w*) That if any person who shall at any time, be imprisoned upon any process whatever for any debt, damages, costs, or money, or any contempt of Court for nonpayment of any sum of money, or of costs, shall be or become of unsound mind, and therefore incapable of taking the benefit of the act for the relief of insolvent debtors, in such manner as such person might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county or place wherein such prisoner shall be, to attend at the said prison, and inquire into the state of mind of such prisoner; and thereupon and also in case any such justice or justices shall receive information by other means, that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine shall inquire into the state of mind of such prisoner; and if it shall appear to such justice or justices upon such inquiry that such prisoner is of unsound mind, and therefore incapable of taking the benefit of that act in such manner as a person of sound mind might do, such justice or justices shall forthwith

make a record of the fact, and certify the same to the Court for the relief of insolvent debtors; and thereupon such Court may at the instance of any person or persons on behalf of such prisoner order notice to be inserted in the *London Gazette*, and in two or more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner before he was committed to such prison, as the said Court shall see fit, that application will be made to the said Court for the discharge of such prisoner, on a day to be specified in such order and notice, being twenty-one days at least from the day of publication of such one of the said gazette and newspapers containing such notice as shall be last published; which notice, together with the service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his or their attorney or attornies in such suit, shall be deemed sufficient to authorize the said Court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of that act; and the said Court shall proceed accordingly, and shall discharge such prisoner from custody, and do all other acts under that act, in case it shall appear that such prisoner

The question of soundness of mind cannot be raised by the creditors, for they are bound by the certificate of the justices; neither can they urge against the insolvent any of the grounds of opposition contained in the 77th or 78th sections of the act 1 & 2 Vict. c. 110, for all these matters savour of criminality, and the state of the insolvent's mind, his absence from Court, and the want of a schedule would necessarily prevent the Court from entertaining any question respecting them. The creditors, however, may shew that the process by which the

might have obtained his or her discharge under that act if he or she had been of sound mind; and thereupon all and every estate, right, title, interest, in law and equity, real and personal, power, benefit, and emolument whatsoever, which, if such prisoner was of sound mind, could or ought to be vested in the said provisional assignee, pursuant to the provisions of that act, shall, by force and virtue of the order of the said Court for the discharge of such prisoner, be vested in the provisional assignee of the said Court, or in the other assignee or assignees appointed by the said Court, and named in the said order, or in any other order of the said Court in that behalf, as fully and effectually, and in the same manner, and with all and every the same consequences and effects, both in fact and law, to all intents and purposes whatsoever, as if such prisoner had been of sound mind, and such order as aforesaid had been made vesting the same in such provisional assignee at the time and in the manner in that act provided; and that it shall be lawful for the said Court to order judgment to be entered up against such prisoner in the same manner as if he or she had been of sound mind, and had executed a warrant

of attorney to authorize the entering up of such judgment in the manner thereinbefore directed, and such order shall be a sufficient authority to the proper officer for entering up the same; and any dividend to be made by such assignee or assignees shall be made in such manner, and such proceedings shall be thereupon had, as are thereinbefore provided in the case of a dividend of the estate and effects of any prisoner made before adjudication; and the discharge of every such prisoner of unsound mind, so made as aforesaid, shall extend to all debts and sums of money to which the same might have extended if such prisoner had been of sound mind, and had duly filed his schedule, according to the provisions of that act: Provided always, that every such order of discharge, and of the appointment of an assignee or assignees, in such case shall be entered of record in the said Court, and proof thereof shall be received by such copy thereof as is thereinbefore directed to be received as proof of conveyances and assignments made in pursuance of that act; 1 & 2 Vict. c. 110, ss. 102, 35; 3 & 4 Vict. c. 107, s. 91, Ir.; see Cooke's Practice of Insolvent Debtors' Court, p. 278, 2nd ed.

insolvent is detained in custody, is not one under which, if he were of sound mind, he could be discharged. They are also entitled to examine any of the insolvent's family (excepting his wife) or any of his servants, with a view to the discovery of property (*x*).

A person having been in prison twelve months in execution on a judgment for a debt not exceeding 20*l.*, exclusive of costs, was disordered in mind and unable to transact business. His wife gave notice to the plaintiff, that she should apply to the Court for his discharge, under statute 48 Geo. 3, c. 123, and she applied accordingly. Notices had been given by the plaintiff for the purpose of bringing up the defendant under the compulsory clause, 32 Geo. 2, c. 28, s. 16, but no account had been obtained from him—it was held, that the Court might act upon the wife's application, and discharge the prisoner (*y*).

There are several old authorities (*z*) in the English law, in support of the maxim, *that a person shall not be allowed to stultify himself*, or, in other words, that he shall not be permitted to allege that his own acts are void, as having been performed by him whilst in a state of mental incapacity; but that advantage of such defect could be taken only by his representatives. The authorities upon this subject are conflicting; and it does not appear to be now clearly settled to what extent the above maxim prevails (*a*).

In the time of Edward I. *non compos* was a sufficient plea to avoid a man's own bond (*b*); and there is a writ in the Register (*c*), for the alienor himself to recover lands aliened by him during his insanity, *dum fuit non compos mentis suæ ut dicit, &c.* (*d*). But, under Edward III., a scruple began to

(*x*) Cooke's Practice Insolvent Debtors' Court, 280, 2nd ed.

(*y*) *Clay v. Bowler*, 5 Ad. & E. 400; 2 Harr. & W. 283; 6 Nev. & M. 814.

(*z*) Litt. s. 405; Co. Litt. 247 b; 4 Rep. 123 b; Perk. s. 23; see *ante*, pp. 325, 345.

(*a*) See 2 Bl. Comm. pp. 291, 292; 1 Powell on Contracts, 14, 15; 1 Fonbl. Tr. Eq. p. 48, n; 1 Story's

Eq. Jurisp. pl. 223—227.

(*b*) Britton, Chap. xxviii. fol. 66.

(*c*) Fol. 228; see also Memorand. Scacch. 22 Edw. 1, (prefixed to Maynard's Year Book, Edward 2,) fol. 23.

(*d*) The writ *dum fuit non compos mentis* is abolished by 3 & 4 Wm. 4, c. 27, s. 36.

arise, whether a man should be permitted to *blemish* himself, by pleading his own insanity (*e*); and afterwards, a defendant in assize having pleaded a release by the plaintiff since the last continuance, to which the plaintiff replied, (*ore tenus*, as the manner then was), that he was out of his mind when he gave it, the Court adjourned the assize, doubting, whether, as the plaintiff was sane both then and at the commencement of the suit, he should be permitted to plead an intermediate deprivation of reason; and the question was asked, how he came to remember the release, if out of his senses when he gave it (*f*).

Under Henry VI., this way of reasoning, (that a man shall not be allowed to disable himself, by pleading his own incapacity, because he cannot know what he did under such a situation), was seriously adopted by the Judges in argument (*g*), upon a question, whether the heir was barred of his right of entry by the feoffment of his insane ancestor. Fitzherbert (*h*) seems to have been of opinion, that a party might take advantage of his own insanity by plea or writ, to avoid his alienation when of unsound mind.

In an action of debt upon a bond, the defendant pleaded, that, at the time of the execution of it, he was *de nonsane memory*, to which the plaintiff demurred; and it was held, that the plea was bad, and that the opinion of Fitzherbert was not law (*i*). In an action upon the case, against an innkeeper, the defendant pleaded, that he was of *nonsane memory*, by sickness, when the plaintiff lodged with him; and it was adjudged, upon demurrer, for the latter, and that the defendant could not say that he was of nonsane memory, nor disable himself in this case, any more than in debt upon an obligation (*k*).

In a recent case (*l*), Mr. Justice *Littledale* is reported to have said—"That there is no doubt that a deed, bond, or other specialty, may be avoided by a plea of lunacy, if at the

(*e*) 5 Edward 3, 70.

(*f*) 35 Assis. pl. 10.

(*g*) 39 Henry 6, 42.

(*h*) See *ante*, p. 345.

(*i*) *Stroud v. Marshall*, Cro. Eliz.

398.

(*k*) *Cross v. Andrews*, Cro. Eliz. 622; 1 Roll. Abr. 2, (D).

(*l*) *Bayster and Others v. Earl of Portsmouth*, 7 Dowl. & Ry. 618.

time it was executed the contracting party was *non compos mentis*, but that such rule of law did not apply to the case of necessities (*m*) supplied to a person who is, generally speaking, of sound mind, but insane on some particular subject; and that an inquisition, finding a party of unsound mind, both before and at the time of the contract, would not make any difference." But, in another case, Lord *Tenterden*, C. J., is reported to have held, that no person can be suffered to stultify himself, and to set up his own lunacy as a defence, unless it can be shewn that he had been imposed upon, in consequence of his mental imbecility (*n*); and appears to have intimated, that, in the case of an unexecuted contract, imbecility of mind may be set up as a defence, although he did not decide that question either way (*o*).

In the Ecclesiastical Court a party may come forward and maintain his own past incapacity to annul his marriage (*p*).

Before the new rules of pleading lunacy might be given in evidence, to avoid a deed under the plea of *non est factum* (*q*). So, before the same rules, intoxication, which is a species of madness, might be given in evidence by the defendant, upon a plea of *non est factum* to a deed, of *non concessit* to a grant, and of *non assumpsit* to a promise (*r*), although this is contrary to the law, as laid down by Sir *E. Coke* (*s*).

The maker of a promissory note, sued by an indorsee, was allowed to plead that the indorser was a lunatic at the time of the indorsement (*t*).

To an action by an indorsee against an indorser of a bill of

(*m*) In *Manby v. Scott*, 2 Sid. 112, it was said, that an *idiot*, like an infant, was bound by a contract for necessities for his household; see 5 B. & C. 172; 7 D. & Ryl. 616; see *ante*, pp. 463, 464.

(*n*) *Brown v. Joddrell*, 3 Carr. & Payne, 30.

(*o*) *Bagster v. Earl of Portsmouth*, 7 Dowl. & Ryl. 617.

(*p*) 1 Hagg. Cons. Rep. 414; see *post*, Chap. xi. p. 578.

(*q*) *Yates v. Bowen*, 2 Str. 1104;

Faulder v. Silk, 3 Campb. 125.

(*r*) *Cole v. Robins*, Bull. N. P. 168; *Pitt v. Smith*, 3 Campb. 33; and see *Cooke v. Clayworth*, 18 Ves. 16; *Butler v. Mulvihill*, 1 Bligh, 137; see *ante*, pp. 339, 345; see rules of Court, Hil. T., 4 Wm. 4; 1 Chitty on Pl. 753—755, 7th ed.

(*s*) Co. Lit. 247, a.; 4 Rep. 123 b.

(*t*) *Alcock v. Alcock*, 3 Mann. & G. 268; see *post*, 544.

exchange the defendant pleaded, that when he indorsed the bill he was so intoxicated, and thereby so entirely deprived of sense, understanding, and the use of his reason, as to be unable to comprehend the meaning, nature, or effect of the indorsement, or to contract thereby; of which the plaintiff, at the time of the indorsement, had notice: It was held, to be a good answer to the action, and not to amount to an argumentative traverse of the indorsement (*u*).

It has been decided, that insanity cannot be set up as a defence to an action brought to recover the value of goods, which have been supplied suitable to the rank and condition of a person who was afterwards found to be of unsound mind, where the vendor had not notice of his imbecility, and where no fraud or imposition could be imputed to him. Thus, in an action of *assumpsit*, for goods sold and delivered to the defendant, who gave in evidence an inquisition taken under a commission of lunacy, by which the defendant was found of unsound mind at the time when the goods were supplied. Lord *Tenterden*, C. J., held, that, as the articles were suitable to the station and fortune of the defendant, and as the plaintiffs, at the time of making the contracts, had no reason to suppose him of unsound mind, and could not be charged with practising any imposition upon him, they were entitled to recover; and, under that direction, the jury found a verdict for the plaintiffs, with leave for the defendant to move to enter a nonsuit. And, on a motion for a rule *nisi* for that purpose, his Lordship further observed, at the time when the orders were given and executed, the defendant was living with his family, and there was no reason to suppose that the plaintiffs knew of his insanity; and that the case was very distinguishable from an attempt to enforce a contract not executed, or one made under circumstances which might have induced a reasonable person to suppose the defendant was of unsound mind. The latter would be cases of imposition; and his Lordship desired, that his judgment might not be taken to be that such contracts would bind, although he was not prepared to say, that they

(*u*) *Gore v. Gibson*, 13 Mees. & W. 623.

would not (v). And, in the same case, Mr. Justice *Bayley* observed—"Imposition and fraud, generally speaking, are grounds for vacating all contracts; and, with respect to the case of a person of unsound mind, if it can be proved that he has been defrauded, or an undue advantage taken of his imbecility, a Court of law will not enforce his contract. But where there is no imposition practised, and the goods supplied appear to be suitable for the condition and degree of the party receiving them, and which, in the ordinary habits of life, he would be likely to require, the mere fact of his being of unsound mind, and incapacitated from making his own contracts, will not deprive a tradesman of his right of suing in a Court of law for the value of the goods for which he has given credit. There may be great difficulty in predicating, on the first view, that a person is of unsound mind. It is well known that there are many individuals capable of speaking and acting most rationally, and who are of perfectly sound mind as to all the ordinary transactions of life, but, on some particular subjects, suffer under an aberration from sound reason. If persons of this description make an application for credit to a tradesman, who is not aware of their infirmity on some particular points, and he *bondâ fide* supplies them with goods, which are suitable to their state and degree, it would be most unjust, that his claim in a Court of law should be defeated by the fact that a commission of lunacy had been awarded, and his debtor found, on inquest, to be insane. There is no suggestion that the plaintiffs have not *bondâ fide* given the defendant credit. Exhibiting about him no appearance of mental incapacity, he goes to the plaintiffs' house and orders carriages, which are afterwards used by him. They are suitable to his condition and degree in life, and such as would have been supplied by other persons, if not by the plaintiffs. Under these circumstances, law and justice require that the plaintiffs should be allowed to maintain an action against the lunatic. If the friends and relations of such a person are

(v) *Baxter v. The Earl of Portsmouth*, 5 Barn. & Cress. 170; *S. C.* 7 Dowl. & Ryl. 614; see *Howard v.*

Digby, 2 Cl. & Fin. 662; *Hill v. Gray*, 1 Stark. 434, 4 T. R. 39.

satisfied that he is incapable of conducting his own affairs, it is competent for them to adopt such measures as shall prevent him from exposure to imposition: but an imposition would be practised upon the plaintiffs, if, under the circumstances of this particular case, the plea of lunacy could prevail" (*w*).

In a subsequent case which occurred at York, a defence of lunacy was set up, *Bayley, J.*, said, "you cannot stultify yourselves in this way. Is a man of doubtful sanity to go about dealing with honest tradesmen, and to say afterwards that he will set up his lunacy to avoid paying the bills? There is nothing extravagant in this bill; there was nothing to give the party notice that he was dealing with a madman; he got the goods delivered to him." A verdict was recovered, and the defendants never sought to set it aside (*x*).

To constitute a defence to an action for use and occupation of a house taken by the defendant under a written agreement, at a stipulated sum per annum, it is not enough to shew that the defendant was a lunatic, and that the house was unnecessary for her, but it must be also shewn that the plaintiff knew this, and took advantage of the defendant's situation; and if that be shewn, the jury should find for the defendant, and they cannot on those facts, find a verdict for the plaintiff for any smaller sum than that specified in the agreement (*y*).

A warrant of attorney was given by the defendant for securing the retransfer of stock, which by the defeasance was to be made "on demand," it was held that judgment could not be entered up after a formal demand made on the defendant whilst insane (*z*).

The relations of a party who has been found a lunatic by inquisition, will not be allowed to set up his lunacy as a defence to an action, unless it be shewn that he has been imposed upon, in consequence of his mental imbecility. Thus, in an action

(*w*) *Bagster v. Earl of Portsmouth*, 7 Dowl. & Ryl. 617, 618; S. C. 2 Carr. & Payne, 178.

(*x*) Cited by Lord *Brougham* in *Howard v. Digby*, 2 Cl. & Fin. 662, 663.

(*y*) *Dane v. Viscountess Kirkwall*, 8 Carr. & P. 679.

(*z*) *Capper v. Dando*, Law J. 1835, K. B. 97, 2 Ad. & E. 458, 4 Nev. & M. 335; see *Robertson v. Lockie*, 10 Jur. 533.

of *assumpsit* for work and labour and goods sold and delivered, where the defendant was charged as a member of an institution called the Athenaeon, of which he acted as president during the time the demand was accruing, and had been subsequently declared a lunatic under an inquisition, from a period before that time; and the defence, which was conducted by his relations, was, that he was of unsound mind at the time the goods were supplied, and therefore incapable of contracting. At that time, his relations had not interfered, but had allowed him to conduct his affairs as usual, and no facts were stated to shew that the plaintiff was aware of the defendant's malady, or had in any way been guilty of fraud. Lord *Tenterden* said, that he was not unwilling to receive the evidence offered; he thought, however, the defence would not avail, unless it was shewn that the plaintiff imposed on the defendant. The old cases went the length of saying, that a party should in no case be allowed to set up his own insanity. That was too general a rule, if it could be shewn that any means had been used to impose upon a person of weak or unsound mind, that, in such a case as this, as in all other cases of fraud, was an answer (a). And in a case where an action was brought for goods sold and delivered and money lent, and it was proved that, at the time of the transaction in question, the defendant was manifestly insane, and that fraudulent advantage had been taken by the plaintiff—Chief Justice *Best* left it to the jury to say, whether the plaintiff, at the time he dealt with the defendant, knew of his insanity; if he did, it was a gross fraud, and the jury ought to find for the defendant; as they accordingly did (b). So, where a person who was perfectly imbecile in mind was imposed upon, and induced to sign a promissory note drawn in an unusual form, such note was held bad, even in the hands of an indorsee (c)—Lord *Tenterden*, C. J., told the jury, “That the question was, whether the defendant, at the time he put his name to the note, which was drawn in an unusual form, was or

(a) *Browne v. Joddrell*, 1 Moody & Malk. N. P. C. 105; S. C. 3 Carr. & Payne, 30.

(b) *Levy v. Barker*, 1 Moody &

Malk. 106, note (b).

(c) *Sentence v. Poole*, 3 Carr. & Payne, 1; see *ante*, 540, 541.

was not conscious of what he was doing ; for, if he was, there must be a verdict for the plaintiff ; but should they be satisfied that he was not conscious of what he was doing, and that he was imposed upon, by reason of his imbecility of mind, they ought to find for the defendant. It was a hard case either way, but it was very important that Courts of Justice should afford protection to those individuals who were unfortunately unable to be their own guardians."

If the agent of the vendor of a picture, knowing that the vendee labours under a delusion, with respect to the picture, which materially influences his judgment, permits him to make the purchase without removing that delusion, the sale is void (*d*).

The life of a lunatic may be said to have determined as to the power of acquiring a domicil at the period of the commencement of the lunacy (*e*).

(*d*) *Hill v. Gray*, 1 Stark. 434 ; (*e*) *Bempde v. Johnstone*, 3 Ves.
4 T. R. 39 ; see Harr. Dig. tit. 201.
Warranty and Deceit.

CHAPTER X.

OF PROCEEDINGS IN COURTS OF EQUITY BY AND AGAINST
LUNATICS AND THEIR COMMITTEES.SECTION I.—*Of proceedings in Equity by lunatics and their committees.*II.—*Of suits against lunatics.**Of proceedings in Equity by lunatics and their committees.*

IDIOTS and lunatics must sue in Courts of Equity by the committees of their estates, and, in such suits, the committees, as well as the lunatic, should be parties; and if the lunatic is not named a party in a bill or information on his behalf, it is good cause of demurrer (*a*). Sometimes, indeed, informations have been exhibited by the Attorney-General on behalf both of idiots and lunatics, considering them as under the peculiar protection of the Crown (*b*), and particularly, if the interest of the committee has clashed with that of the lunatic (*c*), or where no grant of the custody to a committee has been made (*d*). But, in such cases, a proper relator ought to be named; and, in a case where an information was filed at the relation of a lunatic, the Court directed, that all further proceedings should be suspended until a proper person should be named as a relator, who might be responsible to the defendants for the costs of the suit, in case the information should be dismissed (*e*).

Where informations have been filed on behalf of persons found lunatic, but for whom no committee has been appointed, the Court will proceed to give directions for the care of the

(*a*) 1 Cas. in Ch. 19, 153; 1 Eq. Cas. Abr. 279; Wy. Pr. Reg. 272.

(*b*) *Attorney-General v. Parkhurst*, 1 Cas. in Ch. 112; *Attorney-General v. Woolrich*, Id. 153.

(*c*) *Attorney-General v. Parnter*,

3 Br. C. C. 440; S. C. 2 Dick. 748; see *ante*, pp. 294, 295.

(*d*) *Attorney-General v. Mayor, of Dublin*, 1 Bligh, N. S. 348.

(*e*) *Attorney-General v. Tyler*, 2 Eden, 230; see 1 Dick. 378.

lunatic's property, and for proper proceedings to obtain the appointment of a committee (*f*).

Persons incapable of acting for themselves, though not idiots or lunatics, or infants, have been permitted to sue by their next friend, without the intervention of the Attorney-General (*g*).

In a case where a bill was filed by a son to avoid a lease granted by his father, on the ground that the latter was a lunatic when it was granted, the Court would not relieve the plaintiff, because he had not made the Attorney-General a party, but ordered him to amend his bill if he thought fit (*h*).

It has been said that the reason why a lunatic is required to be a party to a suit instituted on his behalf, is because he may recover his understanding, and then he is to have his estate in his own disposition, but that it is otherwise of an idiot from which it seems that an idiot is not a necessary party to a suit instituted on his behalf (*i*). But neither an idiot nor a lunatic can institute a suit, nor can one be instituted on their behalf without the committee being a party, either as a co-plaintiff or as a defendant (*k*), and therefore when the committee of a lunatic filed a bill on his behalf without making himself a co-plaintiff, the case was ordered to stand over with liberty to amend, by making the committee a co-plaintiff (*l*). And a bill for tithe by the bishop and sequestrator, during the incapacity of the incumbent, was dismissed, because the incumbent and his committee were not parties (*m*).

If an idiot or a lunatic exhibiting a bill appears, upon the face of it, to be thus incapable of instituting a suit alone, and no next friend or committee is named in the bill, the defendant may demur; but if the incapacity does not appear upon the face of the bill, the defendant must take advantage of it by plea.

(*f*) *Attorney-General v. Howe*, 2nd ed.
Ld. Red. Pl. 30, n. (*m*).

(*g*) *Liney v. Witherly*, Ld. Red. Pl. 30, n. (*n*); see *Wartnaby v. Wartnaby*, 1 Jac. R. 379.

(*h*) *Leiyh v. Wood*, Rep. temp. Finch. 135.

(*i*) *Attorney-General v. Woolrich*, 1 Ch. C. 153; Dan. Ch. Pr. 8, 90,

(*k*) *Fuller v. Lane*, 1 Ch. C. 19.

(*l*) *Woolfryes v. Woolfryes*, Rolls, 17 Feb. 1824, cited Dan. Ch. Pr. 90, 2nd ed.

(*m*) *Bishop of London v. Nicholls*, Bunb. 141; see Dan. Ch. Pr. 213, 2nd ed.

The objection arising from lunacy extends to the whole bill, and advantage may be taken of it, as well in the case of a bill of discovery merely, as in the case of a bill for relief. For the defendant, in a bill for a discovery only, being always entitled to costs after a full answer as a matter of course, would be materially injured by being compelled to answer a bill exhibited by persons whose property is not in their own disposal, and who are therefore incapable of paying the costs (*n*). If a bill is filed in the name of an idiot or lunatic, so found by inquisition, the defendant may plead the inquisition in abatement of the suit (*o*).

A solicitor ought to have a special authority from his client for instituting a suit, but such authority is not required to be in writing (*q*).

Although it is settled that an authority to file a bill may be given by parol, yet whenever there is assertion against assertion, the solicitor must abide by the consequences of his omission to take a written authority, and may become liable to costs (*r*).

The Court of Exchequer, upon the motion of a defendant, supported by affidavits suggesting that the bill had been filed without any authority from the person named as the plaintiff, such person being so imbecile as to be unable to give any authority for the purpose, and that the suit was instituted for litigious purposes in the name of the plaintiff, but by another defendant in the suit—referred it to the Master to inquire whether any authority was given by the plaintiff for the filing of the bill, and whether the institution of the suit was for his benefit, and whether it was for his advantage that the same should be prosecuted. On the Master reporting in the negative, and that the bill was filed under the authority of one of the defendants, the Court ordered the bill to be taken off the file, and the costs of the other defendants to be paid by the defendant who had instituted the suit (*s*).

It seems that a bill may be ordered to be taken off the file,

(*n*) *Ld. Red. Pl.* 153, 4th ed; see *Wartnaby v. Wartnaby*, 1 *Jac. R.* 377.

(*o*) *Ld. Red. Pl.* 229, 4th ed.

(*q*) *Lord v. Kellett*, 2 *My. & K.* 1; *Dan. Ch. Pr.* 294, 2nd ed.

(*r*) *Martindale v. Lawson*, 1 *C. P. Coop.* 83; *Allen v. Bone*, 4 *Beav.* 493.

(*s*) *Blake v. Smith and Others*, 1 *Younge*, 594.

if filed in the name of a plaintiff who is in a state of mental incapacity; but where a suit has been instituted by the direction of the plaintiff when in a sound state of mind, the proceedings will not be stayed on the ground of the plaintiff's having subsequently become imbecile. Thus, where a motion was made on the part of the defendant to take a bill off the file, on the ground of the plaintiff having been for some time reduced by age and infirmity to a state of mental imbecility, which rendered her incapable of instituting a suit; but the circumstances of the case did not in the opinion of Lord *Eldon*, warrant the inference that, at the time of filing the bill she was incompetent to authorize the proceeding, and as the bill appeared to be a proper one, with a view to her rights and interests, his Lordship thought that as the suit was rightly commenced, and the further prosecution of it proper, it would be a strong step even to stay the proceedings, merely because her state of mind was such that she could not revoke the authority previously given, but that to take the bill off the file, and make the answer waste paper could not be done (*t*). Where one of several co-plaintiffs was of imbecile understanding at the time of the filing of the bill, and his name used without authority, the Court would not order the bill to be taken off the file. The proper relief in such a case would be, that of striking out of the bill the name of the plaintiff, which was used without his authority (*u*). If a plaintiff become a lunatic after the institution of a suit, a supplemental bill may be filed in the joint names of the lunatic and of the committee of his estate, which will answer the same purpose as a bill of revivor, in procuring the benefit of the former proceedings (*v*).

And if the committee of a lunatic's estate die, after a suit has been instituted by him for the lunatic's benefit, and a new committee is appointed, the proper way of continuing the suit is by a supplemental bill filed by the lunatic and the new committee (*w*).

It was held, that a charge in a bill "that a person was of a

(*t*) *Wartnaby v. Wartnaby*, 1 Jac. R. 377.

(*u*) *Brangan v. Gorges*, 7 Ir. Eq. R. 225.

(*v*) See *Brown v. Clark*, 3 Wood. Lect. 378, note, where the form of such a bill is stated.

(*w*) *Dan. Ch. Pr.* 90, 2nd ed.

weak and feeble understanding, approaching almost to idiocy," was an allegation sufficiently precise, (no demurrer having been taken), to put in issue that such person was of *nonsane memory*, but that such allegation would not have been sufficient on a plea, nor on a bill if demurred to (*x*). But the Court will not retain a bill to examine the point of lunacy only (*y*).

The committee ought, previously to instituting a suit on behalf of a lunatic, to obtain the sanction of the Lord Chancellor, and upon a petition being presented, it is usually referred to the Master, to inquire into the nature of the right or interest of the lunatic in the property claimed, and to certify whether it will be proper, that any proceedings should be adopted for recovering it, or for ascertaining the rights of the lunatic (*z*). If the Master reports, that it will be proper for the committee to institute a suit, he will be ordered, in the name and on the behalf of the lunatic, to file a bill in Chancery, or to take such other proceedings as the nature of the case may require (*a*).

The signature of a consent to dismiss a bill, signed by one of the plaintiffs on behalf of himself and another plaintiff, who was of imbecile mind is a nullity as to the latter, as he was not competent to authorize the act (*b*). An insane person cannot appoint an agent on his behalf (*c*).

It seems to have formerly been a rule, that the lunatic should not join with his committee in a suit, to be relieved against any act done during his lunacy (*d*), though he might be a party to a suit, to enforce performance of an agreement entered into prior to the lunacy (*e*), and this was because it was thought, that it would subvert the old principle of law, which forbids a man stultifying himself (*f*). But after the lunatic is so found

(*x*) *Carew v. Johnstone*, 2 Sch. & Lef. 280.

(*y*) *Bonner v. Thwaites*, Toth. 130; *Winthorpe v. Winthorpe*, 12 July, 1845, Ld. Ch.; see *ante*, p. 344.

(*z*) *In re Reynolds*, 3 April, 1827.

(*a*) *In re Webb*, 7 July, 1828; *In re Sir T. Smith*, 14 Nov. 1827; *In re Frank*, 31 Jan. 1828.

(*b*) *Brangan v. Gorges*, 7 Ir. Eq.

R. 221.

(*c*) *Stead v. Thornton*, 3 B. & Ad. 357 n.; *Stephens v. Badcock*, ib. 361, 362; *Tarbut v. Bispham*, 2 Mees. & W. 2; *ante*, p. 531.

(*d*) Wy. Pr. Reg. 272.

(*e*) *Attorney-General v. Woolrich*, 1 Ch. Cas. 153; Vin. Abr. tit. Lunatic, (C. 2).

(*f*) See *ante*, p. 538.

by inquisition, his committee may avoid his acts retrospectively, from the time he is found to have been *non compos*, as has been often done (*g*) upon a bill being filed by the committee for that purpose (*h*). In a case where a bill was brought by a lunatic and his committee, to set aside a settlement which had been obtained from him by the defendant, before the issuing of the commission of lunacy, but subsequently to the time wherein he was found to have been a lunatic, and the bill charged several acts of insanity and distraction previous to the making of the settlement, and the issuing of the commission of lunacy, and charged likewise that such commission was still in force. To this bill the defendant demurred, expressly upon the ground that it was against a known maxim of law, that any person should be admitted to stultify himself; but the Court overruled the demurrer, and said, that rule was to be understood of acts done by the lunatic to the prejudice of others, that he should not be admitted to excuse himself on the pretence of lunacy; but not as to acts done by him to the prejudice of himself. Besides, here the committee is likewise plaintiff, and the several charges of lunacy are made by him on behalf of the lunatic; and it has been always held, that the defendant must answer in that case, although the settlement was not unreasonable in itself (*i*).

The Court of Chancery will not, as a matter of course, interfere to set aside contracts entered into and completed by a lunatic, without any fraud in the parties dealing with him, even where such contracts are overreached by an inquisition taken in lunacy, and may be void at law; but the interference of the Court will depend very much upon the circumstances of each particular case; and where it is impossible to exercise the jurisdiction in favour of the lunatic, so as to do justice to the other party, the Court will refuse relief, and leave the lunatic to his remedy (if any) at law.

It seems also, that although a contract is entered into subsequent to the date from which the party is found to have become a lunatic, yet if the fact of his being a lunatic at the time of the contract is denied by the defendant, the establishment

(*g*) See *ante*, pp. 345, 346.

(*i*) *Ridler v. Ridler*, 1 Eq. Cas.

(*h*) *Ex parte Roberts*, 3 Atk. 6.

Abr. 279; 1 Ch. Cas. 19.

of that fact is indispensably necessary; and if the Court has any doubt upon it, it will direct an issue to try it (*k*).

Assuming the fact of lunacy to be established, and the contracts of the lunatic to be void at law, the interference of equity will depend upon the circumstances of the case. With regard to purchases that have not been completed, and cases in which it is possible to replace the parties, there is no reason why the Court of Chancery should not interfere to administer its ordinary equity; as it can do that in general in a much better way than a Court of Law; even supposing such Court would consider the mere law of the case, in the same way as the Court of Chancery would. But there may be other cases, in which the inconvenience would be so great that the Court of Chancery would leave the party to law. The inconvenience of carrying back the finding is extremely great, if that is to be followed through all the legal consequences. Assuming it to be the legal consequence, that every act of the lunatic subsequent to the time when the lunacy commenced, is absolutely void, nothing can be more inconvenient than for the Court of Chancery to give effect to that legal consequence; setting aside every dealing in the course of the lunatic's trade; giving an account of all he has lost; the parties who have dealt with him taking the chance of the transaction, being a losing one, and making it good; and the transaction being strictly void, that Court acting upon that, and, though the parties cannot be replaced, obliging defendants to refund, though producing the great injustice, that they cannot have that for which the money was paid, or cannot have it in the same manner.

If the contracts in question are void at law, a Court of Equity will not advance the plaintiff's remedy when it is impossible to exercise the jurisdiction so as to afford any chance of doing justice to the other party. If a defendant can be placed *malâ fide* as having notice that he was dealing with an incompetent person, that would be a distinct and different ground on which a Court of Equity may interfere (*l*).

(*k*) *Niell v. Morley*, 9 Ves. 478. see *ante*, pp. 541—543.

(*l*) *Niell v. Morley*, 9 Ves. 476;

After a decree in a suit, a commission of lunacy was issued against the plaintiff, who, being a married woman, was suing by her next friend. The Court, on the application of her husband, a defendant, stayed the proceedings in the suit until the result of the proceedings under the commission was known, for *prima facie*, the suit, instead of being conducted by the next friend, would be conducted under the jurisdiction in lunacy (*m*).

All loans of money on real securities in Ireland under the act 4 & 5 Wm. 4, c. 29, in which any person of unsound mind is interested shall be made by the authority of the Court of Chancery upon petition in a summary way (*n*).

An order, upon petition of the committee, although no bill has been filed, will be made to restrain tenants of a lunatic's estate from committing waste (*o*).

A writ of *ne exeat regno* will be granted, upon an affidavit made by the committee of a lunatic on his behalf (*p*).

A bill will not lie in a lunatic's lifetime to perpetuate the testimony of witnesses to his will, made before his lunacy (*q*). For, in order to support a bill to perpetuate testimony, the plaintiff must have in contemplation of law a present interest, although it is immaterial how minute the interest may be; and how distant the possibility of its falling into possession. On the other hand, though the contingency may be ever so proximate and valuable, yet, if the party has not, by virtue of that, an estate, the Court does not deal with him; and, therefore, although a lunatic is intestate, in the most hopeless state, under a moral and physical impossibility (though the law would not so regard it,) that he should ever recover, even if he was *in articulo mortis*, and the bill was filed at that instant by the heir-at-law, or by the next of kin, of the lunatic, they could not qualify themselves as having an interest in the subject of the

(*m*) *Hartley v. Gilbert*, 13 Sim. 596.

(*n*) 4 & 5 Wm. 4, c. 29, s. 2; see *Stuart v. Stuart*, 3 Beav. 430; *Ex parte Lord Powlett*, 1 Phill. C. C. 321.

(*o*) *In re Creagh*, 1 Ball & Beatty, 108; *ante*, p. 449.

(*p*) *Stewart v. Graham*, 19 Ves. 312.

(*q*) *Sackvill v. Aylworth*, 1 Vern. 105; *ante*, p. 443.

suit. The heir apparent and next of kin of a lunatic are considered to have no interest whatever in his property (*r*). But they may enter into contracts with respect to their expectations and possibilities; the evidence upon which they may perpetuate (*s*).

The means of perpetuating testimony have been extended in certain other cases. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of *any future event* to any honor, dignity, or office, or to *any estate or interest* in any real or personal property, the right or claim to which cannot by him be brought to trial before the happening of such event, is now entitled to file a bill in Chancery to perpetuate any testimony which may be material for establishing such claim or right (*t*).

All laws and rules not contrary to the act then (30th July, 1842) in force in suits to perpetuate testimony, or respecting depositions taken in such suits, or the punishment of perjury, apply to proceedings under that act (*u*).

Where a creditor, under a commission of bankruptcy, is deranged, and unable to superintend his business, the Court of Chancery, although no commission of lunacy has issued, will, upon petition, order another person to prove on his behalf, and to vote in the choice of assignees (*v*); and where a creditor is disabled, by age and imbecility of mind, from proving by his own oath, a debt against the estate of a bankrupt, the commissioners will be directed to admit the proof upon such evidence as shall be satisfactory to them without the party's affidavit, though the debt be of considerable amount (*w*).

A trader being indebted to a lunatic in the amount of the purchase money of a business, and the machinery and stock in trade, after carrying on the business alone for some time,

(*r*) *Smith v. Attorney-General*, cited 6 Ves. 269; *Allan v. Allan*, 15 Ves. 133; and see 2 Jac. & Walk. 451; Ld. Red. Pl. 51—53, 4th ed.

(*s*) 6 Ves. 261; see *Persse v. Persse*, 7 Cl. & Fin. 316.

(*t*) 5 & 6 Vict. c. 69, s. 1.

(*u*) *Ib*.

(*v*) *Ex parte Maltby*, 1 Rose, B. C. 387.

(*w*) *Ex parte Clarke, In re Waugh*, 2 Russ. 575.

enters into partnership under an agreement, by which the stock in trade and property of the sole business were to belong to the firm, which was to take upon itself the liabilities of the sole business. The firm renders an annual account in its own name in respect of the debt to the committee of the lunatic, who makes no objection to this form of the account. It was held, on the firm becoming bankrupt, that the committee was not entitled to prove against the joint estate. It is questionable whether he had power, and whether the Lord Chancellor could have given him power, to convert the separate into a joint liability (*x*).

A petition prayed for liberty to prove a debt against the estate of a bankrupt on behalf of a person of unsound mind, it was held, that the assignees were not entitled to get their costs of the petition from the petitioner (*y*).

A reference may be made to the Master, in cases of lunacy, to expunge scandalous or impertinent matter contained in proceedings in lunacy (*z*).

The old Statutes (*a*) of Limitation did not expressly extend to equitable claims, but Courts of Equity acted by analogy to those statutes; and, therefore, generally, if a party did not prosecute his equitable title within the period which he must have made his claim, if legal, in a Court of law, he would be barred in equity (*b*), except in cases of fraud (*c*). The legal provisions have been so strictly adhered to, that persons labouring under any of the disabilities specified in the Statute of Limitations, have been allowed the same time in equity as they would be

(*x*) *Ex parte Parker*, 2 Mon. Dea. & De G. 511; 6 Jur. 541; see *Ex parte Marton*, 11 Ves. 397; *Ex parte Williams*, Buck, 13; see *Ex parte Bradbury re Walden*, 4 Deac. 202; Mont. & C. 625.

(*y*) *Ex parte Bucknall*, *In re Bishton*, 12 Law Journal, N. S. 42, Bankruptcy; see *Ex parte Heald*, *ib.* p. 37.

(*z*) *Ex parte Le Heup*, 18 Ves. 221; *In re Frank*, 24 Mar. 1830; see Orders, 3 April, 1828, Nos. 73,

74; May, 1845, Nos. 38—42; Dan. Ch. Pr. 1153, 2nd ed.

(*a*) See *ante*, pp. 521, 522.

(*b*) 1 Cox's Rep. 149; 1 Ball & B. 166; 19 Ves. 96; 1 Sch. & Lef. 429; *Cholmondeley v. Clinton*, 2 Jac. & Walk. 175, 191; Turn. & R. 107.

(*c*) 3 Br. C. C. 633, 639, n.; 4 Br. C. C. 258; 2 Ves. jun. 87; 5 Ves. 480; 14 Ves. 91; 2 Sch. & Lef. 607, 630; 1 Ball & B. 62, 156; 4 Br. P. C. 198.

entitled to in case of a legal claim (*d*). Thus, redemption of a mortgage of lands of a married woman, on account of her disability of coverture, was decreed to her heir after a sale and the lapse of a long period (*e*). And Lord *Talbot* said, "That the Court of Chancery had not in general thought proper to exceed twenty years, where there was no *disability*, in imitation of the first clause of the Statute of Limitations; so, after the disability removed, the time fixed for prosecuting in the proviso, (which is ten years), ought in like manner to be observed" (*f*).

In one case the Court refused, after the lapse of twenty years, and two subsequent purchases, at the suit of the son of a *non compos*, to impeach a conveyance executed by the latter (*g*).

The alterations made in respect to the limitation of suits in equity by the stat. 3 & 4 Wm. 4, c. 27, have been already stated (*h*).

No petition of appeal from any decree or sentence of any Court of Equity in England or Ireland, will be received by the House of Lords, after two years from the signing or enrolling, or extracting of such decree or sentence, and the end of fourteen days from the first day of the meeting of Parliament, next ensuing such two years, unless the person entitled to such appeal be within the age of twenty-one years, or covert, *non compos mentis*, imprisoned, or out of Great Britain and Ireland; in which case such person may bring his appeal within two years next after his full age, discovery, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland, and fourteen days from the first day of the meeting of Parliament next ensuing such two years. In no case shall any person be allowed a longer time, on account of mere absence

(*d*) *Lytton v. Lytton*, 4 Bro. C. C. 441; *Blake v. Foster*, 2 Ball & Beat. 565; *Harrison v. Hollins*, 1 Sim. & Stu. 471.

(*e*) *Cornel v. Sykes*, 1 Ch. Rep. 193; *Hodde v. Healey*, 1 Ves. & B. 539; see *ante*, p. 526, n. (*f*).

(*f*) *Belch v. Harvey*, 3 P. Wms.

287, note; see 17 Ves. 184.

(*g*) *Winchcomb v. Hall*, 1 Ch. Rep. 41; see 1 Fonbl. Eq. 334, n. (*t*); see *ante*, p. 371; see *Whalley v. Whalley*, 1 Mer. 436; S. C. 3 Bligh, p. 1; see *ante*, pp. 347—358.

(*h*) *Ante*, pp. 522—526; see Dan. Ch. Pr. 606—620, 2nd ed.

to lodge an appeal than five years from the date of the last decree, or interlocutor appealed against (*i*).

Appeals from decrees in the Court of Session in Scotland, must be lodged within two years from the signing the last interlocutor appealed from, or before the end of fourteen days from the first session of Parliament next ensuing such two years; but in case of the person entitled to appeal being an infant, or *non compos mentis*, they, or their heirs or representatives, where no appeal had been previously entered on their behalf, may enter an appeal within two years after their full age, or coming of sound mind, or after the death of the person so disqualified, and the opening of the succession, or before the end of fourteen days after the first day of the session of Parliament next ensuing such two years (*k*).

SECTION II.

Of Suits against Lunatics.

IDIOTS and lunatics defend suits in equity by their committees (*a*), who are by order of the Court, appointed guardians for that purpose, as a matter of course (*b*); and, if it happens that an idiot or lunatic has no committee (*c*), or the committee has an interest opposite to that of the person whose property is entrusted to his care (*d*), an order may be obtained for appointing another person as guardian for the purpose of defending a suit against a lunatic (*e*).

(*i*) Standing Order, H. L. No. 118, Lords' Journ. 24 Mar. 1725; 22 June, 1829; 6 Cl. & Fin. 976; see *De Burgh v. Clark*, 4 Cl. & Fin. 562.

(*k*) 6 Geo. 4, c. 120, s. 25.

(*a*) 1 Vern. 106; *Lyon v. Mercer*, 1 Sim. & Stu. 356; *Thomas v. Howorth*, Toth. 130; *Willis v. Parkinson*, 2 Mer. 507.

(*b*) *Westcomb v. Westcomb*, 1 Dick. 233, citing *Torin v. Jervois*, 19 Oct. 1750.

(*c*) *Howlett v. Wilbraham*, 5 Madd. 423.

(*d*) *Snell v. Hyatt*, 1 Dick. 287; see *Lloyd v. ———*, 2 Dick. 460.

(*e*) Ld. Red. Pl. 82; see *Howlett v. Wilbraham*, 5 Madd. 423; *Brassington v. Brassington*, 2 Anstr. 369.

A person who has been found a lunatic, answers by his committee, in such a case it does not seem necessary that there should be any order appointing a guardian, unless there be a conflict of interest between the committee and the lunatic, in which case a guardian may be appointed.

A. was found a lunatic in Ireland, and B. was appointed his committee there, A. being a defendant to a suit in England, an application was made that B. might be appointed guardian *ad litem*, it was held that the proper course was to get the Irish commission recorded in England, under 11 Geo. 4 and 1 Wm. 4, c. 65, s. 41, and then for the lunatic and committee to answer together (*f*).

In many cases, it is not prudent in committees to take upon themselves the responsibility of defending suits instituted against lunatics without having obtained the direction of the Lord Chancellor, who, on application by petition, usually refers the consideration of the propriety of defending suits to the Master (*g*).

A defendant, who is of unsound mind but not found so by inquisition, may, together with his wife, a co-defendant, both of whom are residing out of the jurisdiction, be served by order of the Court with subpœna to appear and answer the bill under the first article of the 33rd order of 8th May, 1845 (*h*).

Where, according to the present practice, it has been usual to assign a six clerk guardian, *ad litem*, of an infant or person of unsound mind, the Court may appoint one of the solicitors of the Court to be such guardian, and may direct that the costs to be incurred in the performance of the duties of such office, shall be borne and paid, either by the parties or some one or more of the parties to the suit in which such appointment shall be made, or out of any fund in Court, in which such infant or person of unsound mind may be interested, and may give directions for the repayment or

(*f*) *Hartland (Lady) v. Atcherly*,
7 Beav. 53; *ante*, pp. 22, 23.

(*g*) See *ante*, pp. 243, 277, 278.

(*h*) *Biddulph v. Lord Camoys*,
Law J. 1846, Ch. 141; see *Whitmore v. Ryan*, 4 Hare, 612.

allowance of such costs as the justice and circumstances of the case may require (*i*).

The order appointing a solicitor to be guardian *ad litem* of a lunatic, not found so by commission, may be made under the 28th order of October, 1842, on the application of the plaintiff; but it cannot be made without service of notice upon the alleged lunatic (*k*).

Where a guardian *ad litem* of a person of unsound mind, though not so found by inquisition dies, a special application is necessary to obtain the appointment of a new guardian, and an appointment by an order of course is irregular (*l*).

There must be at least six clear days between the service of a notice of motion by the plaintiff for the appointment of a guardian, by whom a defendant who is an infant or a person of weak intellect or of unsound mind may defend the suit, and the day named in the notice for hearing the motion (*m*).

Any appearance entered at the instance of the plaintiff for a defendant who, at the time of the entry thereof, is an infant, or a person of weak or unsound mind, unable of himself to defend the suit, is irregular and of no validity (*n*).

Where a joint answer cannot be obtained from a husband and wife on account of his lunacy, an order for the wife to answer separately will be made (*o*).

If, upon default made by a defendant in not appearing to or not answering a bill, it appears to the Court that such defendant is an infant, or a person of weak or unsound mind, not so found by inquisition, so that he is unable of himself to defend the suit, the Court may upon the application of the plaintiff, order that one of the solicitors of the Court be assigned guardian of such defendant, by whom he may appear to and answer, or may answer the bill and defend the suit.

But no such order is to be made unless it appears to the Court on the hearing of such application, that the subpoena to appear to and answer the bill was duly served, and that notice

(*i*) 28 Order, 26 Oct. 1842.

(*k*) *Brooks v. Jobling*, 2 Hare, 155, 8 Jur. 186.

(*l*) *Needham v. Smith*, 6 Beav. 130.

(*m*) Orders 8 May, 1845, No. 16, s. 48.

(*n*) Orders 8 May, 1845, No. 30.

(*o*) *Escourt v. Ewington*, 9 Sim. 252; 2 Jur. 414.

of such application was, after the expiration of the time allowed for appearing to or for answering the bill, and at least six days before the hearing of the application, served upon or left at the dwelling-house of the person, with whom or under whose care such defendant was at the time of serving such subpœna, and (in the case of such defendant being an infant not residing with or under the care of his father or guardian), that notice of such application was also served upon or left at the dwelling-house of the father or guardian of such infant, unless the Court at the time of hearing such application thinks fit to dispense with such last mentioned service (*o*).

The practice of the Court of Chancery in appointing guardians for persons who cannot be found to be lunatics, or of unsound mind, by inquisition, was compared by Lord *Eldon* to the power exercised by that Court with respect to infants; and he said that such practice, and that of paying the expenses out of the property of such persons, could be justified only by the necessity of taking care of them (*p*).

If a person, who is in the condition of an idiot or lunatic, though not found such by inquisition, is made a defendant, the Court, upon information of his incapacity, will direct a guardian to be appointed; but if the demand in question was considerable, it was said that the regular way would have been to have taken out a commission of lunacy (*q*). In another case, where a motion was made that the answer of a defendant, who was a trustee only under a will without any beneficial interest, might be taken without oath and without signature, upon the ground that the defendant was in so infirm a state, both of body and of mind, as to be wholly incapable of putting in an answer—Lord *Eldon* observed, that the usual course in such a case is, to appoint a guardian for that purpose, and that it was much better, where there is no commission, to throw round a person, under such circumstances, the protection of some capable person, than to let the defendant answer at all hazards; but no order was made in this case (*r*).

On the motion of a plaintiff in a cause, a guardian will be

(*o*) Orders 8 May, 1845, No. 32.

(*q*) *Anon.* 3 P. Wms. 111, n.

(*p*) *Sherwood v. Sanderson*, 19

(*r*) *Wilson v. Grace*, 14 Ves. 172.

appointed to put in an answer for a defendant who is a lunatic, if such fact is verified by affidavit (*s*); or on the sheriff's return to an attachment *cepi corpus*, and that the defendant is insane (*ss*). If the fact of the defendant's being, from infirmity of mind, incompetent to answer, be disputed, it will be referred to the Master to inquire into it: and in one case an order was made for the defendant to attend the Master, with liberty for him to call in such medical assistance as he might think necessary in making such inquiry (*t*). Where it appeared in evidence that a defendant was both senseless and dumb, and incapable of instructing his counsel to draw his answer, it was ordered that no attachment, or other process of contempt should be awarded against the defendant for not answering without the special order of the Court (*u*). Where the defendant became impaired in his mind after the decree, a guardian was appointed for him, by whom he might produce books, &c. (*v*).

If a bill is brought against a lunatic, stating him to be such, it is a matter of course to apply to the Court for a commission to assign him a guardian, and to take his answer by such guardian; but if the bill does not state the defendant to be a lunatic, in that case an affidavit or other evidence will be required to shew his lunacy, before he can be permitted to answer by guardian (*w*). But where it was stated by the bill that one of three defendants thereto was a lunatic, and another his committee duly appointed by an order of the Court of Chancery, and the third, the receiver and manager of the estate in question, it was held, that the defendant, the committee, was, in that character, fully competent to sustain the defence of the lunatic, without an order of the Court of Exchequer appointing him his guardian (*x*). The practice is the same with respect to idiots and such persons as by age or infirmity are reduced to a second infancy. A dumb man has been directed to answer a bill, and also interrogatories, in

(*s*) *Howlett v. Wilbraham*, 5 Madd. 423; *Attorney-General v. Waddington*, 1 Madd. Ch. Pr. 321; *Pryce v. Page*, *Ibid.* note; *O'Brien v. Mahon*, 1 Crawf. & D. Ir. R. 138.

(*ss*) *Estcourt v. Ewington*, 9 Sim. 252, 2 Jur. 414.

(*t*) *Lee v. Rider and Others*, 6 Madd. 294; Reg. Lib. B. 1821, fol. 435.

(*u*) *Altham v. Smith*, Cary, Rep. 93.

(*v*) *Gason v. Garnier*, 1 Dick. 286.

(*w*) 1 Fowl. Exch. 422.

(*x*) *Ibid.*

person. But a person not only dumb, but too senseless to instruct counsel to draw an answer, would not be permitted to answer personally (*y*).

In a case where it was clear that a man was incompetent to put in an answer to the bill filed against him, Lord *Redesdale* said, he could only (like an infant) have answered by another person. If he had been so brought into Court upon an attachment, and an answer had been put in by the guardian appointed by the Court, on an apprehension that he was not of such unsound mind, that a commission of lunacy ought to have been taken out, yet of such imbecility that a guardian was necessary, then the answer of the guardian ought to have been merely, that he knew nothing of the matter, and submitted his case to the protection of the Court (*z*).

A plaintiff cannot except for insufficiency to the answer of a defendant of unsound mind, against whom a commission of lunacy has not issued, answering by his guardian (*a*). The answer of an idiot or lunatic, put in by his committee, may be read against him (*b*). It is said that the answer of a superannuated person put in by guardian, may be read against him as an answer of one of full age put in, in person; and that the difference in this respect between such an answer, and that of an infant put in by a guardian is, because an infant improves and mends, and therefore is to have a day to shew cause after he comes of age; but the other grows worse, and is to have no day (*c*). But it is reported to have been decided, that the answer of an imbecile or superannuated person cannot be read against him (*d*).

The Court refused to permit the answer of the guardian *ad litem* of a superannuated person to be read against him, and would not make a decree against him thereon, but required the case to be proved against him (*e*).

Where a friend of an incapable person is willing to act on his

(*y*) Toth. 140, Wy. Pr. Reg. 292.

229; Gilb. Eq. R. 4; Dan. Ch. 188, 2nd ed.

(*z*) *Carew v. Johnston*, 2 Sch. & Lef. 293.

(*d*) *Wilds v. Davis*, 4 Jur. 715.

(*a*) *Micklethwaite v. Atkinson*, 1 Coll. C. C. 173.

(*e*) *Freeman v. Grady*, 8 Ir. Eq. R. 137; see *Crawford v. Kernaghan*, 1 Dru. & Walsh, 195.

(*b*) Dan. Ch. Pr. 807, 2nd ed.

(*c*) *Leving v. Caverly*, Pr. Ch.

behalf, a commission to appoint a guardian may be issued, whether it be a town or country cause, and such commission may be executed any where. The order for the commission having been drawn up, passed, and entered, names of commissioners must be left with the clerk in Court of the defendants, for insertion in the commission; which differ in no respect from the form of a commission to appoint guardians to infants, except in stating the parties to be incapable from age or infirmity or the unsoundness of their understanding; the proceedings, *mutatis mutandis*, are the same as under commissions to appoint guardians to infants (*e*).

Where it appeared that a defendant having been tried for a misdemeanor, was confined in a lunatic asylum by the order of the Secretary of State, the Court directed a commission to issue to appoint a guardian without the affidavit of a medical man—but the application was supported by the affidavit, that the party was a lunatic, and in confinement as above stated (*f*).

If it shall appear to the satisfaction of the Court, that any prisoner confined for a contempt is an *idiot, lunatic, or of unsound mind*, although no commission has issued, the Court shall appoint a guardian to put in his answer and discharge the defendant, providing for the costs in any of the ways pointed out by the act 11 Geo. 4 and 1 Wm. 4, c. 36, as shall seem just; and if the Court shall see fit, the defence may be made by such guardian *in formâ pauperis* (*g*).

(*e*) Hind. 251; see Harr. Ch. Pr. by Newl. 361—366; Dan. Ch. Pr. 720, 2nd ed.; 1 Smith's Ch. Pr. 362, 3rd ed.

(*f*) *Lucas v. Cole*, Law J. 1841, Ch. 315, 5 Jur. 930.

In support of the motion, the following cases extracted from the Registrar's book were cited: *East-erby v. Henwick*, 2nd November, 1835, R. L. A. 1835, f. 5, commission to appoint a guardian on the application of a defendant, on affidavit that a party defendant was incapable of understanding the subject of the suit; *Smith v. Annesley*, 14th February, 1834, R. L.

1833, f. 398, a similar order was made on defendant's application; *Mayo v. Wright*, 1st March, 1837, R. L. 1836, f. 86, similar order; *Millar v. Smales*, 31st July, 1829, R. L. 1828, f. 1759, plaintiff's application, on the allegation that the defendant had been served with a subpœna, and an affidavit of a medical man as to the state of the defendant's health; a guardian was appointed to put in an answer without oath or signature.

(*g*) 11 Geo. 4 & 1 Wm. 4, c. 36, s. 15, rule 9. The 5 & 6 Wm. 4, c. 16, s. 12, rule 6, contains a similar rule as to Ireland.

If a defendant in a cause becomes a lunatic, a supplemental bill must be filed against him and his committee (*h*); and if a new committee is appointed, the Court will direct him to be named in all the future proceedings in the cause, whether such change of committees takes place before or after the decree in the suit (*i*).

Insanity is a good defence to a bill filed against a lunatic for specific performance of an agreement. Thus, where a bill was filed against a lunatic and his committees to obtain specific performance of an agreement dated 9th March, 1802, for the sale of an advowson, and the defendant had been subsequently found a lunatic under a commission of lunacy, from the 1st of May, 1792, with lucid intervals—Two grounds of defence were taken by the answer of the lunatic by his committee:—*First*, that he was a lunatic at the time of the execution of the contract:—*Secondly*, that the plaintiff knew his situation, and took advantage of it to induce him to sign the agreement in question. An issue was directed to try whether the defendant was a lunatic on the day on which he executed the agreement in question, and if so, whether he executed the same agreement during a lucid interval (*k*). It is the usual practice in such cases to direct an issue to try the fact of insanity (*l*).

Courts of equity will not only sustain contracts completed by the lunatic whilst sane; but, under some circumstances, will enforce such as were entered into previously to the commencement of the lunacy, but incomplete at that time; for such a change in the condition of a party entering into an agreement will not alter the relative rights of the parties if they can be enforced. As, where the legal estate is vested in trustees, a Court of equity ought to decree a performance; but formerly, if the legal estate was vested in the lunatic himself, a Court of equity could not afford any adequate relief (*m*). It seems to have been the practice in such cases for the Court to decree that the lunatic should execute a conveyance when he

(*h*) *Johnson v. Legard*, Reg. Lib. A. 1815, fol. 556; and see 1 Sim. & Stu. 356; 2 Madd. Ch. 523.

(*i*) *Lyon v. Mercer*, 1 Sim. & Stu. 356.

(*k*) *Hall v. Warren*, 9 Ves. 605.

(*l*) See *ante*, pp. 325, 342, 343, 348.

(*m*) *Owen v. Davies*, 1 Ves. sen. 82; *Hall v. Warren*, 9 Ves. 605.

recovered his understanding, and that, in the meantime, the other party should hold and enjoy the land (*n*). Sir *William Grant* observed—That it did not appear to him, that if a party was satisfied with that which in truth was no title, but only an enjoyment under the order of the Court, he ought not to have all the Court could give him (*o*). But, now when any person, who shall have contracted to sell, mortgage, let, divide, exchange, or otherwise dispose of any land, shall afterwards become lunatic, and a specific performance of such contract, either wholly or so far as the same shall have been decreed by the Court of Chancery, either before or after such lunacy—the committee of the estate of such lunatic, in the place of such lunatic, by the direction of the Lord Chancellor, to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit, may convey such land in pursuance of such decree, to such person and in such manner as the Lord Chancellor shall direct; and the purchase money, or so much thereof as remains unpaid, shall be paid to the committee of such lunatic (*p*).

A petition under 11 Geo. 4 and 1 Wm. 4, c. 65, s. 27, seeking a conveyance by the committee of the lunatic of certain lands in performance of a contract, must be entitled in the lunacy as well as in the suit which had been instituted (*q*).

One of three tenants in common of an estate was a person of weak intellects, but had not been found so by inquisition, and had put in an answer by her guardian on a bill filed by the other two tenants in common for a partition. The Court directed a commission of partition to issue, and that the lands should be held in severalty (*r*).

An inquisition of lunacy will not protect a lunatic against an action (*s*), and a commission of bankruptcy is a species of action against which lunacy cannot be used as a defence (*t*), if the act of bankruptcy was committed when the party was sane; for a lunatic under the influence of that visitation cannot

(*n*) *Pegg v. Skinner*, 1 Cox, C. C. 23.

(*o*) *Hall v. Warren*, 9 Ves. 605.

(*p*) 11 Geo. 4 & 1 Wm. 4, c. 65, s. 27; see *ante*, pp. 491—493.

(*q*) *Unett v. Unett*, 1 Jur. 620.

(*r*) *Hollingworth v. Sidebottom*, 8 Sim. 620; *ante*, p. 337.

(*s*) *Ante*, Chap. ix. s. 2, p. 532.

(*t*) *Anon.* 13 Ves. 590.

commit an act of bankruptcy (*u*). Lord *Eldon*, however, is reported to have said—That where one of the partners was a *lunatic*, it was clear that a joint commission of bankrupt could not be taken out against the other partners (*v*). But, by the present Bankrupt Act (*w*), a commission may be issued against some partners, not including all the firm; and may be superseded as to one or more, without affecting its validity as to the other.

The lunacy of a party not so found by inquisition has been held sufficient to dispense with the usual affidavit, that his certificate and the consent of the creditors to his discharge had been obtained without fraud, an affidavit to the same effect being made by some other party (*ww*).

The insanity of one of the *partners* in a firm does not *ipso facto* determine the *partnership*; and the interference of the Court in such a case, whether in a suit or in lunacy, must have reference to the particular character of the disease as permanent or temporary, the terms of the contract, and the nature of the undertaking, as imposing on the lunatic an obligation of active interference, for the performance of which he is disqualified, or reserving to him a right of inspection, by the suspension of which the safety of his estate is hazarded (*x*).

Where a bill was filed by one partner against another, for the purpose of dissolving a partnership, although the other partner, who, having been insane, had recovered—Sir *L. Kenyon*, M. R., laid down, as a general rule, that, where there are two partners, both of whom are to contribute their skill and industry in carrying on the trade, the insanity of one of them, by which he is rendered incapable to contribute that skill and industry on his part, is a good ground to put an end to the partnership, not by the authority of either of the partners, but

(*u*) *Ex parte Priddy*, 8th June, 1793. A commission of bankruptcy against an infant is *void*; *Bolton v. Hodges*, 9 Bing. 365.

(*v*) *Ex parte Layton*, 6 Ves. 440.

(*w*) 6 Geo. 4, c. 16, s. 16.

(*ww*) *Ex parte May*, 2 Mont. D. & De G. 381; *Ex parte Roberts, In re Roberts*, Mont. & C. 653; see 5 & 6 Vict. c. 122, ss. 20, 21, as to an

act of bankruptcy by a trader omitting to pay money under an order in lunacy.

(*x*) *Wrexham v. Huddleston*, 1 Swanst. 514—518; S. C. cited 2 Ves. sen. 35; see Wats. on Part. pp. 360, 382, 2nd ed.; Gow on Part. pp. 221, 222, 3rd ed.; Collyer on Part. pp. 159, 160; pp. 194, 195, 2nd ed.

by application to a Court of Justice; and this for the sake, as well of the partner who is rendered incapable, as of the other; for it would be a great hardship upon a person so disordered, if his property might be continued in a business which he could not control nor inspect, and be subject to the imprudence of another. And he said, if one of the partners had been insane at that time, he should have had no hesitation in decreeing a dissolution of the partnership (*y*). In that case it was referred to the Master to inquire and state whether the defendant was in such a state of mind as to be capable of conducting the business in which he was a copartner with the plaintiff, according to the terms of the articles of partnership (*z*). The Master reported, that, in his opinion, the defendant was in such a state of mind as to be capable of conducting the business. Exceptions were taken to the report, when an issue was directed to try the question in the terms of the reference to the Master; but it does not appear that any subsequent proceedings took place (*a*).

During a partnership for twenty-one years, one of the parties became and was found a lunatic. On a bill by the other partner to dissolve the partnership on account of the lunacy, to which the committee was made a party, and admitted the lunacy, Lord *Langdale*, M. R., directed a reference to the Master as to the competency of the partner to conduct the business according to the articles (*b*). But in a subsequent case upon the lunacy of one member of a partnership firm being found by inquiry, *Shadwell*, V. C., decreed a dissolution against him and an account, without a reference to the Master as to the lunacy (*c*).

To justify a decree for the dissolution of a partnership, on the ground of insanity, it is not sufficient to shew that the party stated to be insane, is not for the time so capable as he had previously been of attending to and conducting the business, but it must be shewn clearly that he is really insane (*d*).

(*y*) *Sayer v. Bennet*, 1 Mont. on Part. p. 17, notes; S. C. 1 Cox, 107.

(*z*) *Sayer v. Bennet*, 1 Mont. on Part. 19, notes.

(*a*) Wats. on Part. 382, 383.

(*b*) *Patey v. Patey*, Law J. 1836, Ch. 198; see 2 Ves. sen. 35.

(*c*) *Milne v. Bartlet*, Law J. 1839, V. C. 254, 3 Jur. 358.

(*d*) *Sadler v. Lee*, Law J. 1843, Ch. 407; 7 Jur. 476, 6 Beav. 324.

An agreement for a partnership contained these words, "Six months' notice, ending on any future 31st December, to be given by either of the parties hereunto wishing to dissolve this agreement." It was held that a notice served on the partner whilst he was a lunatic, was sufficient, the Court thinking that all had been done which the parties had agreed should be done (*e*).

Lord *Eldon*, in one case, adverted incidentally to this subject, and said—"That if a case had arisen in which it was clearly established by testimony, as far as it could, that the party was what is called an incurable lunatic, and he had by the articles contracted to be always actively engaged in the partnership, and it appeared that he could not perform his contract, it would be very difficult for a Court of equity to hold one man to his contract, when it was perfectly clear that the other could not execute his part of it" (*f*).

It is clear upon principle, that the complete incapacity of a party to perform that which was a condition of the agreement, is a ground for determining the contract. The insanity of a partner is a ground for the dissolution of the partnership, because it is immediate incapacity; but it may not in the result, prove to be ground of dissolution, for the partner may recover from his malady. When a partner, therefore, is affected with insanity, the continuing partner may, if he think fit, make it a ground of dissolution, but in that case, in order to make it a ground of dissolution, he must obtain a decree of the Court. If he does not apply to the Court for a decree of dissolution, it is to be considered that he is willing to wait, to see whether the incapacity of the partner may not prove merely temporary. If he carry on the partnership business, in the expectation that his partner may recover from his insanity, so long as he continues the business with that expectation or hope, there can be no dissolution. One of two partners having continued the partnership business for some time after the lunacy of the other, and having then sold the business, the representative of the

(*e*) *Robertson v. Lockie*, 10 Jur. 533; in *Kirby v. Carr*, 3 Y. & Coll. C. C. 185, it seems to have been admitted that notice could not be

given to a lunatic partner; see *Capper v. Dando*, *ante*, p. 543.

(*f*) *Waters v. Taylor*, 2 Ves. & Bea. 303.

deceased lunatic partner was held to be entitled to his share of the partnership profits up to the period of the sale (*g*).

On a bill to dissolve a partnership, on the ground of the lunacy of a partner, the Court will not make its decree retrospective, even to the filing of the bill, still less to the time when the defendant first became incapable of attending to business.

On a bill to dissolve a partnership on the ground of the lunacy of a partner, V. C. *Shadwell*, had decreed the partnership dissolved from the time it was proved by evidence in the cause that the defendant had, by reason of his unsoundness of mind, been unable to attend to or assist in the partnership business (*h*). Upon appeal Lord *Lyndhurst*, C., said—"Whatever delay had occurred was imputable to the plaintiff himself; it was competent to him to have filed his bill at any moment since the time when his partner first became incapable of attending to the business; but he chose to lie by for several years, and having during that time had the benefit of his partner's share of the capital and goodwill, he could not then say that the partnership was to be dissolved, as from the time when the insanity commenced; for what a hardship it would be if the plaintiff were to take all the profits which had since accrued from the defendant's share of the partnership property, while the defendant remained during that time, liable to the losses." Upon the question whether the dissolution ought to be from the filing of the bill or from the date of the decree, his Lordship decided that the partnership must be declared to have been dissolved as from the date of the Vice Chancellor's decree (*i*).

Lord *Lyndhurst*, C., further observed, how can the dissolution be decreed from the time when the incapacity of the partner commenced? "Suppose the plaintiff became insolvent, the lunatic would be bound notwithstanding this retrospective decree,

(*g*) *Jones v. Noy*, 2 My. & K. 125.

(*h*) In *Kirby v. Carr*, 3 Y. & Coll. C. C. 184, after the incurable lunacy of the partner had been established before the Master, a dissolution of the partnership was decreed as from the filing of the bill.

(*i*) *Besch v. Frolich*, 1 Phill. C. C. 172; 7 Jur. 73, Law J. 1843, Ch. 118. A decree for a dissolution of a partnership, on the ground of insanity, was made as from the date of the decree; *Sander^e v. Sander*, 2 Coll. C. C. 276.

to pay the partnership debts, contracted during the time that the business continued to be carried on in the joint names. Besides it must be remembered that there are three considerations between partners. The share of each in the capital: the share of each in the goodwill: and the labour which each undertakes to devote to the business. Your argument is, that because one of these considerations—and that perhaps the least valuable of the three—fails, you are entitled from that time to take to yourself the whole benefit of the other two; and that too, while your partner remains jointly liable for the debts of the partnership during the intermediate period. How can that be right? it would be contrary to all principles of justice” (*k*).

When a *partner* has been found a lunatic by inquisition, the Lord Chancellor, in the exercise of his jurisdiction in lunacy, will generally refer it to the Master to inquire what course should be pursued with respect to the management of the concerns of the partnership, and, in some cases, will order it to be dissolved and the accounts to be settled.

In one case, where a manufactory had been carried on by two brothers as partners, one of whom was found to be a lunatic by inquisition, on the petition of the *sane* brother, it was referred to the Master, to inquire and certify whether it would be for the benefit of the lunatic's estate to continue such trade or business in copartnership, and under what provisions, or whether it would be more beneficial to his estate to dissolve the partnership, and to have the concerns thereof finally adjusted and settled; and if he should be of that opinion, then he was directed to certify the proper time and best manner to dispose of the lunatic's interest in such copartnership (*l*).

The Master, by his report, certified his opinion, that it would *not* be for the benefit of the lunatic's estate to continue the copartnership with his brother, but that it would be more beneficial to dissolve the same, and to have the concerns thereof finally settled, and that it would be advisable to dispose of the lunatic's interest with as little delay as possible, at such time and in such manner as to the brother should appear

(*k*) *Besch v. Frolich*, 1 Phill. C. C. 174, 175. (*l*) *In re Nunn*, 6th July, 1829.

most beneficial, with the exception of the premises where the manufactory was carried on, which the Master was of opinion should be sold or underlet.

The Master's report was confirmed, when it was ordered, that the lunatic's brother should, under the direction and subject to the approbation of the Master, take the necessary steps for winding up and discontinuing, or, if practicable, for disposing of, the lunatic's share of the partnership trade, with as little delay as possible, with liberty for the brother to sell and dispose of the machinery, stock, and other property of the partnership trade, either together or separately, and by private contract, or public auction, or otherwise, at such period, for such prices, and in such manner as he might judge most for the benefit of the lunatic's estate, with full power for the brother to exercise his discretion in making such disposition, upon condition that he should not himself become the purchaser of any part thereof; and it was ordered, that the brother, within one month after such sales should have been completed, or as soon after as the produce could be ascertained, should leave with the Master a full account of such sales, to be verified by affidavit. The Master was also directed to take an account of the produce of the lunatic's interest in the partnership property, and of the profits and losses thereof, and to state the clear balance due to the latter; and to certify whether any allowance ought to be made to the brother for his services in the management of the trade from its commencement to its termination (*m*).

If the property of a lunatic be taken in execution, the Court of Chancery will not, in general, restrain the proceedings at law (*n*). But, in a case where an injunction had been obtained to stay a trial at law against a lunatic, and the trial, notwithstanding, had been allowed to proceed, the Lord Chancellor said, that execution would not be allowed to be taken out without the leave of the Court of Chancery (*o*).

Where persons withdraw themselves beyond the seas, or

(*m*) *Id.* 25th Feb. 1830; see *ante*, p. 480, where a Private Act was obtained for selling partnership property.

(*n*) *Ex parte Dikes*, 8 Ves. 79; see 7 & 8 Vict. c. 96, s. 62.

(*o*) *Barrett v. Tickell*, Jac. R. 154; see *ante*, pp. 459, 462.

otherwise abscond, to avoid being served with the process of Courts of equity, certain steps are directed to be taken, and if the defendant does not appear, the Court will order that the plaintiff's bill shall be taken *pro confesso*, and make a decree, and issue process to compel the performance of such decree (*p*). If any decree shall be made in pursuance of the act 11 Geo. 4 and 1 Wm. 4, c. 36, against any person being out of the realm, or absconding, at the time such decree is pronounced, and such person shall, within seven years after the making such decree, return, or become publicly visible, then and in such case he shall likewise be served with a copy of such decree, within a reasonable time after his return or public appearance shall be known to the plaintiff; and in case any defendant against whom such decree shall be made, shall, within seven years after the making such decree, happen to die before his or her return into this realm, or appearing openly as aforesaid, or shall, within the time last before mentioned, die in custody before his or her being served with a copy of such decree, then his or her heir, if such defendant shall have any real estate sequestered, or whereof possession shall have been delivered to the plaintiff, and such heir may be found, or if such heir shall be a *feme covert*, infant, or *non compos mentis*, the husband, guardian, or committee of such heir respectively, or if the personal estate of such defendant be sequestered, or possession thereof delivered to the plaintiff, then his executor or administrator (if any such there be), shall be served with a copy of such decree, within a reasonable time after it shall be known to the plaintiff that the defendant is dead, and who is his heir, executor, or administrator, or where he may be served therewith (*q*).

(*p*) 11 Geo. 4 & 1 Wm. 4, c. 36, s. 3; see 31 Gen. Order, May, 1845; 2 Wm. 4, c. 33, and 4 & 5 Wm. 4, c. 82, as to service of process issuing from the Courts of Chancery and Exchequer in England and Ireland respectively; 33rd Order, May, 1845; 1 Dan. Ch. Pr. 419—423, 2nd ed.; 1 Smith's Ch. Pr. 273, 3rd ed.

(*q*) 11 Geo. 4 & 1 Wm. 4, c. 36, s. 5, which repealed 5 Geo. 2, c. 25, and part of 45 Geo. 3, c. 124; see 5 & 6 Wm. 4, c. 16, s. 4, which contains a similar provision as to Ireland. See 2 Wm. 4, c. 33, and 4 & 5 Wm. 4, cc. 78, 82, as to proceedings in the Court of Chancery in Ireland.

On a motion by a defendant in a suit, to get rid of a decree *pro confesso*, and that he might be at liberty to put in an answer on his own affidavit, that he had been deranged, the Court held that the alleged imbecility could not be so proved, and required other evidence of it than that of the party himself, extending to the whole period of the suit (*r*).

On motion to take a bill *pro confesso* against the guardian, *ad litem* of a lunatic who had become so since the bill was filed—the order was made on the terms of serving notice on the nearest relations of the lunatic and guardian (*s*).

By the Irish acts (*t*), for the relief of mortgagees, and for making the process in Courts of equity more effectual against mortgagors who abscond, and cannot be served therewith, and against persons, who, being served, refuse to appear, it is provided, that, if any person shall file a bill of foreclosure, in any Court of equity in Ireland, against any person having an estate, and not being resident therein; in case it shall appear by affidavit to the Court, that such defendant is out of the said kingdom, and has been so for twelve months next preceding such affidavit, it shall be lawful for the Court to order, that the service of a *subpœna* to appear and answer upon the steward, agent, receiver or manager of the said defendant, and leaving a copy thereof at his last place of abode in Ireland, be deemed good service; and on the defendant neglecting to appear or answer within four Terms after such service, the plaintiff shall be at liberty to proceed in his suit to have his bill taken *pro confesso*, in the same manner as if the defendant had appeared.

The seventh section of that act provides, that where any defendant to any bill filed in Chancery or the Exchequer, shall appear to the said Courts to have been duly served with process of *subpœna* to answer such bill, and shall stand out process of contempt to a sequestration, and neglect to appear on such

(*r*) *Knight v. Young*, 2 Ves. & Bea. 184; see *London v. Ready*, 1 Sim. & S. 44; *Ogilvie v. Herne*, 13 Ves. 563; *King v. Bryant*, 3 My. & Cr. 191.

(*s*) *Crawford v. Kernaghan*, 1 D. & Walsh, 195; see Dan. Ch. Pr. 483, 2nd ed.; 1 Smith, Ch. P. 260.

(*t*) Irish stat 7 Geo. 2, c. 14, s. 2, explained by 13 Geo. 2, c. 9.

service by his six clerk or attorney, such Court may appoint a clerk in Court to appear for such defendant, and such proceedings may be had, as if such defendant had actually appeared. And by the eighth section of the above act it is provided, that all persons who shall, at the time any decree in pursuance of that act shall be made against them, be of *nonsane memory*, shall have two years from the time of service of such decree upon them, after the removal of such disability, to make their defence, and shew cause against the same.

If a party is a lunatic at the time of the decree, and, on recovering his mind, the decree is served on him, the Court must allow him to put in an answer, and then there is an end of the decree, and the Court will proceed as in any other case, and the whole matter will be gone over again (*u*).

An heir of a person, described in the eighth section of the above act, is entitled to take advantage of it. Thus, where a decree of foreclosure had been obtained, on sequestration in Ireland, in 1777, in pursuance of that act, against an absent mortgagor, known by the plaintiff to be incompetent, from mental imbecility, to conduct his affairs, and advantage had been taken in the account of the state of the defendant, and of his absence, and of his having nobody to manage his defence; and a sale had been made in 1780, in pursuance of such decree, to the person conducting the suit; on a bill filed by the heir of the mortgagor, such sale was set aside as fraudulent, and an inquiry was directed into the circumstances; and it was declared, that the equity of redemption of the mortgagor was not barred by the decree and proceedings in the suit (*v*).

(*u*) 2 Sch. & Lef. 304.

(*v*) *Carew v. Johnston*, 2 Sch. & Lef. 280.

CHAPTER XI.

OF PROCEEDINGS IN THE ECCLESIASTICAL AND OTHER
COURTS RESPECTING THE MARRIAGE OF LUNATICS.

IT seems to have been formerly considered, that, by the common law, which differed in this respect from the civil, the marriage of an idiot was valid (*a*). But it is now settled that idiots cannot marry, for marriage is a civil contract, the basis of which is consent, which idiots are incapable of giving, and therefore of entering into that or any other contract (*b*). And, for the same reason, lunatics are disabled from marrying, except during lucid intervals; and their marriages, as well as those of idiots, are absolutely void (*c*). Want of reason must, of course, invalidate the most important contract of life, the very essence of which is consent. It is not material, whether the want of consent arises from idiocy or lunacy, or from both combined. If the incapacity be such, arising from either or both causes, that the party is incapable of understanding the nature of the contract itself, and incapable, from mental imbecility, to take care of his or her own person and property, such an individual cannot dispose of her person and property by the matrimonial contract, any more than by any other contract (*d*). But, it has been held in the Ecclesiastical Court, that a person born deaf and dumb, if *compos mentis*, may contract matrimony by signs (*e*).

In case any person who, at or after the 24th June, 1742, shall be found a lunatic, by any inquisition taken by virtue of

(*a*) Roll's Abr. 357; Shepp. Abr. tit. Idiot; 1 Sid. 112; Harg. Co. Litt. 80 a., note (1); 1 Bl. Comm. 438.

(*b*) *Morrison's case*, coram Delegates, 1745; *Cloudesley v. Evans*, Prerog. 1763; *Parker v. Parker*, 1757, cited 1 Hagg. Cons. R. 417; and see 2 Phill. Eccl. R. 19.

(*c*) *Turner v. Mayers*, 1 Hagg. Cons. R. 414; *Browning v. Reane*, 2 Phill. Eccl. R. 69.

(*d*) 2 Phill. Eccl. R. 70; see 1 Stair's Inst. by Brodie, pp. 24, 28, n.; Erskine's Inst. by Ivory, pp. 117, 199; Blair's Dict. 6293.

(*e*) Swinburne on Marr. sect. 15.

a commission under the great seal of Great Britain; or any lunatic or person under a phrensy, whose person and estate by virtue of any act of Parliament then were or thereafter shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sane mind by the Lord High Chancellor of Great Britain, the Lord Keeper, or Lords Commissioners of the Great Seal of Great Britain for the time being, or such trustees as aforesaid, or the major part of them respectively, every such marriage shall be null and void to all intents and purposes (*f*).

The provisions of this act have since been extended to Ireland (*g*). These statutes render the marriages in question void, although they may have been contracted during lucid intervals (*h*). When a commission of lunacy has been taken out, the conclusion against the marriage will be founded on the statute (*i*); where there has been no such commission, the matter is to be established on evidence. The statute has made provisions against such marriages, even in lucid intervals, till the commission has been superseded. In other cases, the Court will require it to be shewn by strong evidence, that the marriage was clearly had in a lucid interval, if it is first found that the person was generally insane (*k*).

An inquisition of lunacy finding a person a lunatic before marriage is conclusive against it under the statute 15 Geo. 2,

(*f*) 15 Geo. 2, c. 30.

(*g*) 51 Geo. 3, c. 37, which enacts that after 10th June, 1811, in case any person who had been, or at any time thereafter should be found a lunatic by any inquisition taken or to be taken by virtue of a commission under the Great Seal of Great Britain, or the Great Seal of Ireland respectively, or any lunatic or person under a phrensy, whose person and estate by virtue of any act of Parliament then or thereafter should be committed to the care and custody of particular trustees, shall marry before he or she shall be

declared of sane mind by the Lord High Chancellor of Great Britain or Ireland, or the Lord Keeper or Lords Commissioners of the Great Seal of Great Britain or Ireland for the time being, or such trustees as aforesaid, or the major part of them respectively, as the nature of the case shall require, every such marriage should be void to all intents and purposes whatsoever.

(*h*) 1 Hagg. Cons. R. 417.

(*i*) 15 Geo. 2, c. 30.

(*k*) 1 Hagg. Cons. R. 417.

c. 30, and such an inquisition after marriage is strong confirmation of the other evidence of insanity (*l*).

The Spiritual Court has the sole and exclusive cognizance of questioning and deciding directly the legality of marriage, and of enforcing specifically the rights and obligations respecting persons depending upon it; but the temporal Courts have the sole cognizance of examining and deciding upon all temporal rights of property; and so far as such rights are concerned, they have the inherent power of deciding incidentally, either upon the fact or legality of marriage (*m*).

It is a common practice, in the Court of Chancery, where no commission of lunacy has issued, and the party is before the Court, to direct an issue to try whether the party was of sound mind at the time of the contract of marriage, and if he was, it is of no consequence in what state he might have been, either before or after (*n*). Where a young lady had been insane, and, with her father's consent, was married during a lucid interval, Lord *Eldon*, C., afterwards examined her, and found that she was affected with a certain degree of morbid feeling; and it appeared in evidence, that, without any apparent foundation for the notion, she always believed that somebody had poisoned her. As she was a ward of the Court, and no commission of lunacy existed, an issue was directed, to try whether she was of sound mind at the time of the marriage; and it was found that she was of sound mind (*o*).

In case the father or fathers of the parties to be married, or one of them being under the age of twenty-one years, not being a widower or widow, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary by 4 Geo. 4, c. 76, s. 16, to the marriage of such party or parties, shall be *non compos mentis*, any person desirous of marrying in such case may apply by petition to the Lord Chancellor, Lord Keeper, or the Lords Commissioners of the Great Seal of Great Britain for the time being,

(*l*) *Browning v. Reane*, 2 Phill. pp. 459—469.

Ecccl. R. 90.

(*n*) See *Ex parte Ferne*, 5 Ves.

(*m*) Starkie on Ev. 931; Duchess 832

of *Kingston's* case, 20 How. St. Tr.

(*o*) 1 Dow, P. C. 178.

538; Shelford on Law of Marriage,

Master of the Rolls, or Vice-Chancellor of England, who is and are respectively thereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall, upon examination, appear to be proper, the said Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the time being, Master of the Rolls, or Vice-Chancellor, shall judicially declare the same to be so; and such judicial declaration shall be as effectual, as if the father, guardian or guardians, or mother of the person so petitioning had consented to such marriage (*p*).

On sufficient proof in the Ecclesiastical Court that a party was deranged at the time of marriage, it will be pronounced void. And in that Court, a party who was insane at the time of contracting a marriage, may himself, on recovering his senses, institute a suit to set aside his marriage, on the ground of his own incapacity at the time. The learned Judge laid it down, as perfectly clear in law, that a party may come forward to maintain *his own past* incapacity, and that a defect of capacity invalidates the contract of marriage, as well as any other contract (*q*). But the degree of proof must be stronger than ordinary, when a person brings a suit or allegation of his own incapacity, by exposing to view the changes of his mind (*r*). The committee of one *non compos* may also institute a suit for nullity of marriage, on account of the alleged incapacity of the party, at the time of contracting it (*s*). But the finding of the jury under a commission of lunacy is only a circumstance, and a part of the evidence in support of the unsoundness of mind at the time of the marriage, as the Ecclesiastical Court requires to be satisfied by its own evidence, that grounds of nullity existed (*t*).

References have been sometimes made to the Master to inquire whether it is proper that any steps should be taken for avoiding the marriages of persons who have been found

(*p*) 4 Geo. 4, c. 76, s. 17; see 5 Vict. c. 5, s. 22, 3 My. & Cr. 471; *Ex parte Reibey*, Jur. 589.

(*q*) *Turner v. Meyers*, 1 Hagg. Cons. R. 414.

(*r*) *S. C.* 418.

(*s*) 2 Phill. Eccl. R. 160; *Fust v.*

Bowerman, cited in 2 Hagg. Cons. R. 171; *The Earl of Portsmouth v. The Countess of Portsmouth*, 3 Add. 63.

(*t*) 1 Hagg. Eccl. Rep. 356; 2 Phill. Eccl. R. 90; see *ante*, p. 75.

lunatics by inquisition, and their committees have been ordered to institute a suit in the Ecclesiastical Court for that purpose. Where a party had been found a lunatic from a period antecedent to his marriage, and a petition of his committees stated that he was insane, and had not a lucid interval at the time of the celebration of the marriage, and was wholly unfit to sanction the same, and that the person he had married was a loose character, and the Master had certified that it would be proper to try the question of the insanity of the lunatic at the time of marriage in the Ecclesiastical Court—it was ordered that the committees should be at liberty to institute and prosecute such proceedings in the Ecclesiastical Court as they should be advised, for the purpose of having the marriage declared void (*u*). In another case, it was referred to the Master to inquire and certify whether any and what proceedings were necessary to be taken by the committee of the estate of the lunatic with respect to his marriage, and as to the validity of certain deeds (*v*). An order founded on the Master's report, was afterwards made, that the committee of the person and estate of the lunatic should be at liberty, in his name and on his behalf, to commence and prosecute such proceedings in the proper Ecclesiastical Court as he might be advised, for declaring such marriage to be void (*w*).

In all suits of nullity of marriage brought by or on the part of the husband, the wife *de facto* is regularly entitled, as well to alimony pending the suit, as to payment of all such costs as she incurs in her defence. And the Ecclesiastical Court will refuse to proceed in a suit by the committee of the husband for setting aside a marriage, even although fraud is imputed to the wife in procuring it, until funds have been provided by such committee to enable the wife to conduct her defence (*x*).

(*u*) *In re Smith*, 6th November, 1818.

(*v*) *In re The Earl of Portsmouth*, 5 Aug. 1823.

(*w*) *In re The Earl of Portsmouth*, 23rd Aug. 1824.

(*x*) *Countess of Portsmouth v. Earl of Portsmouth*, 3 Addams, 63; *Smith v. Smith*, in *Arches Court*, 1818, cited *ibid.*; Shelford on Law of Marriage, pp. 586—592.

A marriage *de facto* solemnized under circumstances of clandestinity, inferring fraud and circumvention, between a person of weak and deranged mind, and the daughter of his trustee and solicitor (who had great influence over him, and by whom he was clearly considered and treated as of unsound mind), was pronounced null and void; and the pretended wife was condemned in costs.

Sir *John Nicholl* observed, in giving judgment—"The law of the case admits of no controversy, and none has been attempted to be raised upon it. When a fact of marriage has been regularly solemnized, the presumption is in its favour; but then it must be solemnized between parties competent to contract, capable of entering into that most important engagement, the very essence of which is consent; and without soundness of mind there can be no legal consent—none binding in law: insanity vitiates all acts. That considerable weakness of mind, circumvented by proportionate fraud, will vitiate the fact of marriage, whether the fraud is practised on his ward by a party who stands in the relation of guardian, as in the case of *Harford* against *Morris* (y), which was decided principally on the ground of fraud; or, whether it is effected by a trustee, procuring the solemnization of the marriage of his own daughter with a person of very weak mind, over whom he has acquired a great ascendancy. A person incapable from weakness of detecting the fraud, and of resisting the ascendancy practised in obtaining his consent to the contract, can hardly be considered as binding himself in point of law by such an act. At all events, the circumstances preceding and attending the marriage itself, may materially tend to shew the contracting party was of unsound mind, and was so considered and treated by the parties engaged in fraudulently effecting the marriage. In respect of Lord Portsmouth's unsoundness of mind, the case set up is of a mixed nature, not absolute idiocy, but weakness of understanding—not continued insanity, but delusions and irrationality on particular subjects. Absolute idiocy, or constant insanity, would have carried with them their own security and protection; for, in either case, the forms preceding, and the

(y) 2 Hagg. Cons. Rep. 423; See Shelford on Law of Marriage, 134.

ceremony itself, could not have been gone through without exposure and detection; but here a mixture of both, by no means uncommon, is set up—considerable natural weakness, growing at length, from being left to itself and uncontrolled, into practices so irrational and unnatural as in some instances to be bordering upon idiocy, and in others to be attended with actual delusion—a perversion of mind—a deranged imagination—a fancy and belief of the existence of things which no rational being, no person possessed of the powers of reason and judgment, “could possibly believe to exist.”

“The Hansons, in the mode of planning and conducting the transaction, shew that they treated and considered Lord Portsmouth as a person of unsound mind; and Lord Portsmouth in submitting, acquiescing, and not resisting, confirms his own incompetency. Even if no actual unsoundness of mind, strictly so called—if no insane derangement had existed—if only weakness of mind—and all admit he was weak—yet, considering the passiveness and timidity of his character on the one hand, the influence and relation of Hanson, his trustee, on the other, and the clandestinity and other marks of fraud which accompanied the whole transaction, the learned Judge was by no means prepared to say, that, without actual derangement in the strict sense, the marriage would not be invalid; but, in his judgment, Lord Portsmouth was of unsound mind, as well as circumvented by fraud” (z).

Where a suit was brought by the father to annul the marriage of a party of competent age, without setting up any special interest, but averring the insanity of the son at the time; and the only question was, whether the person before the Court was the proper person to plead it—the Court held that the father could not sustain the suit, no commission of lunacy having been obtained (a).

Where a lunatic, after having been so found by inquisition, married, and his committee presented a petition for the purpose

(z) *The Countess of Portsmouth*
v. *The Earl of Portsmouth*, 1 Hag-

gard's Eccl. Rep. 355.

(a) 1 Hagg. Cons. R. 414, note.

of taking the opinion of the Court, whether any steps should be adopted in the Ecclesiastical Court to have the marriage declared void—Lord *Eldon*, C., referred it to the Master to see what proceedings ought to be taken, who having stated in his report that the marriage was void by operation of the statute 15 Geo. 2, c. 30, and that no proceedings were necessary to be had in the Ecclesiastical Court to have the marriage declared void, such report was confirmed by the Lord Chancellor on the petition of the committee (*b*).

The rights of property arising out of a marriage contract, must be understood of one which is contracted by persons of competent understandings; and therefore, the right of curtesy or dower will not attach where a marriage is *void* on account of the *lunacy* of one of the parties, although, if there was a valid marriage, the subsequent insanity of either of them will not prevent such interests taking effect as in other cases (*c*).

A marriage has been declared void in the Ecclesiastical Court on the ground of one of the parties being incompetent from mental incapacity to contract, even after the death of such person; and administration of the effects of a wife was refused to the husband, on the ground that his marriage had been illegally contracted (*d*).

Generally speaking, the Ecclesiastical Court cannot proceed to judge of the validity of a marriage, and to pronounce sentence of nullity of a voidable marriage, after the death of one of the married parties, on account of its tendency to bastardize the issue (*e*).

The committee of a lunatic may institute proceedings in the Ecclesiastical Court, without obtaining the sanction of the Lord Chancellor, against the wife of the lunatic for adultery (*f*).

(*b*) *Ex parte Turing*, 1 Ves. & Bea. 140, and note, see *ante*, p. 576.

(*c*) Co. Litt. 30 b., and note by Harg.—Bac. Abr. tit. Idiots and Lun. (D).

(*d*) *Browning v. Reane*, 2 Phill. Eccl. R. 69; see *ante*, p. 436; *Parker*

v. Parker, 2 Lee, 382.

(*e*) *Hicks v. Harris*, Carth. 271, 2 Salk. 548; see Shelford on Law of Marriage, 484.

(*f*) *Parnell v. Parnell*, 2 Phill. Eccl. R. 158.

In a further proceeding in the case last cited, Lord *Stowell* said—"That he was not aware of any case which had occurred precisely similar; it must therefore be decided, not on express authority, but on principle, or rules of analogy drawn from other authorities, which are clear and undisputed. The question resolves itself into two points:—*first*, whether a lunatic is put out of the protection of the law; and, *secondly*, if he is not, whether there is any other mode in which redress can be obtained. On the first, there can be no doubt; and it never can be asserted that the wives of lunatics should be universally released from the duties of their marriage vow. It would be an imputation on the law of this country, to suppose that it had not provided some remedy against such a mischief. Then, in what way is this protection to be afforded? It must be in the same way as in other cases, by the committee. The lunatic cannot personally institute the suit, and, therefore, he must act by his ordinary guardian. It is true, as has been observed, that, in complicated matters, the committee ordinarily applies to the Lord Chancellor for authority to sue; but the learned Judge did not know that it would be advisable to promote a suit before the Lord Chancellor, preparatory to proceedings of this nature. The Ecclesiastical Court has no authority over the committee, to require that he should make an application to it. It is bound to receive his plea when brought, as matter of right. On these grounds, and upon principle, the powers of the committee must be upheld, to protect the lunatic from the greatest of all possible injuries" (*g*). The lunatic on recovering his senses may exercise the power of condonation in respect of his wife's adultery (*h*).

To marry, or procure the marriage of an idiot by contrivance, is a criminal offence, for which an information may be filed by the Attorney-General (*i*). Also, to marry a *non compos*, the custody of whom has been granted by the Great Seal, is a contempt of the Court of Chancery, for which the offender

(*g*) *Parnell v. Parnell*, 2 Hagg. Eccl. R. 160.

Cons. R. 170, 171.

(*i*) *Smart v. Taylor*, 9 Mod. 98;

(*h*) *Parnell v. Parnell*, 2 Phill. S. C. 2 Eq. Cas. Abr. 584.

may be committed (*k*). The Lord Chancellor has sometimes ordered the property of a *non compos* who has married, to be secured (*l*).

(*k*) Mrs. *Ashe's* case, Prec. in Chanc. 203; *S. C.* 1 Eq. Cas. Abr. 278; Freem. C. C. 260.

Chanc. 412; 2 Eq. Cas. Abr. 583; Gilb. Ch. 276; *Nightingale v. Lockman*, Mos. 231, Fitzgib. 148.

(*l*) *Packer v. Wyndham*, Prec. in

CHAPTER XII.

OF CRIMINAL OFFENCES COMMITTED BY AND AGAINST LUNATICS.

SECTION I.—*Of crimes committed by lunatics.*II.—*Of misdemeanors respecting lunatics.*

SECTION I.

Of crimes committed by lunatics.

THE essence of a crime consists in the *animus* or intention of the person who commits it, considered as a free agent, and in a capacity of distinguishing between moral good and evil. The man under the influence of real madness, has properly no will, but commits actions unconsciously and insensibly, and, therefore, cannot be made answerable for their consequences, in the same manner as persons in their senses.

A man totally and permanently mad, cannot be guilty of a crime, and is not amenable to the laws of his country as a criminal, although the law has provided for his safe custody.

If a man subject to *temporary fits* of complete and perfect madness commits a crime, he is not liable to punishment for such acts as were done in the midst of his delirium, but for those committed in his lucid intervals, he is as liable to punishment as any other man, and if on his trial he pleads insanity, it will be incumbent on him to prove that the act with which he stands charged was committed at a time when he was actually insane. And if a person liable to *partial insanity*, which only relates to particular subjects or notions, upon which he talks and acts like a madman; still, if he has as much reason as enables him to distinguish between right and wrong, he will be liable to that punishment which the law attaches to his crime.

Opinion of the Judges in relation to crimes by persons subject to insane delusions.—Several questions having been proposed to the Judges by the House of Lords, in relation to the law respecting alleged crimes, committed by persons afflicted with insane delusion.—*Tindal*, C. J., delivered the unanimous opinion of all the Judges, (with the exception of *Maule*, J., who stated his opinion separately) and stated in the first place, that they had forborne entering into any particular discussion upon the questions proposed, from the extreme and almost insuperable difficulty of applying those answers to cases in which the facts are not brought judicially before them. The facts of each particular case must of necessity present themselves with endless variety, and with every shade of difference in each case; and, as it is their duty to declare the law upon each particular case, upon facts proved before them, and after hearing arguments of counsel thereon, they deem it at once impracticable, and at the same time dangerous to the administration of justice, if it were practicable, to attempt to make minute applications of the principles involved in the answers given by them to the questions proposed, and they had therefore confined their answers to the statement of that which they hold to be the law upon the abstract questions proposed. The first question proposed was—“What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?” “In answer to which question, assuming that your Lordships’ inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion, that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at

the time of committing such crime that he was acting contrary to law—by which expression, we understand your Lordships to mean the law of the land.”

The second question was—“What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for example), and insanity is set up as a defence?” And, thirdly—“In what terms ought the question to be left to the jury as to the prisoner’s state of mind at the time when the act was committed?” And, as these two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved, that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did not know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of the doing of the act, knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put with reference to the party’s knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas, the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does not know it. If the accused was conscious that the act was one which he ought not to do, and

if that act was at the same time contrary to the law of the land, he is punishable; and the usual course therefore has been, to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

The fourth question proposed was—"If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?" To which question the answer must of course depend on the nature of the delusion; but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility, as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment." (*a*). The fifth and last question with the answer thereto have been previously stated (*b*).

Cases in which plea of insanity was set up as defence.—In the case of Lord Ferrers, who was tried before the House of Lords for murder; it was proved that his Lordship was occasionally insane, and incapable, from his insanity, of knowing what he did, or judging of the consequences of his actions. But the murder was deliberate, and it appeared, that when he committed the crime, he had capacity sufficient to form a design and know its consequences. It was urged, on the part of the prosecution, that complete possession of reason was unnecessary to warrant the judgment of the law, and that it was sufficient, if the party had such possession of reason as enabled him

(*a*) 8 Scott, N. R. 600—603; Fin. 208—212.
1 Carr. & K. 134—136; 10 Cl. & (*b*) *Ante*, pp. 79, 80.

to comprehend the nature of his actions and discriminate between moral good and evil. And he was found guilty and executed (*b*).

In Arnold's case, who was tried and convicted at Kingston before Mr. Justice *Tracy*, for maliciously shooting at Lord Onslow, it appeared clearly that the prisoner was, to a certain extent, deranged, and that he had greatly misconceived the conduct of Lord Onslow; but it also appeared, that he had formed a regular design, and prepared the proper means for carrying it into effect. The learned Judge left the case to the jury, observing, "that the fact for which the prisoner was indicted, was proved beyond all manner of contradiction; but whether the shooting was malicious, depended upon the sanity of the man, whether the prisoner had the use of reason and sense? If he was under the visitation of God, and could not distinguish between good and evil, and did not know what he did, though he committed the greatest offence, yet he could not be guilty of any offence against any law whatsoever; for guilt arose from the mind, and the wicked will and intention of the man. If a man be deprived of his reason, and consequently of his intention, he could not be guilty; and if that be the case, though he had actually killed Lord Onslow, he was exempted from punishment; punishment being intended for example, and to deter other persons from wicked designs; but the punishment of a madman, a person without design, can have no example. On the other side, it is not every frantic and idle humour of a man, that would exempt him from justice, and the punishment of the law. It must be a man that is totally deprived of his understanding and memory, and did not know what he was doing, more than an infant, a brute, or a wild beast; such a one was never the object of punishment; therefore he left to the jury the consideration, whether the condition the prisoner was proved to be in, shewed that he knew what he was doing, and was able to distinguish whether he was doing good or evil, and understood what he did; and as it was admitted on the part of the prisoner, that he was not an idiot, and, as a

lunatic might have lucid intervals, the jury was to consider what he was at the day when he committed the fact in question. There were many circumstances about buying the powder, and the shot, his going backward and forward ; and, if they believed he had the use of his reason, and understood what he did, then he was not within the exemption of the law, but was as subject to punishment as any other person" (c).

In Parker's case, who was indicted for aiding the King's enemies, by entering into the French service, in the time of war between France and this country, the defence of the prisoner was rested upon the ground of insanity ; and a witness on his behalf stated, that his general character from a child was that of a person of very weak intellects ; so weak that it excited surprise in the neighbourhood when he was accepted for a soldier. But the evidence for the prosecution, had shewn the act to have been done with considerable deliberation, and possession of reason ; and that the prisoner, who was a marine, having been captured by the French, and carried into the isle of France, after a confinement of about six weeks, entered voluntarily into the French service, and stated to a captive comrade, that it was much more agreeable to be at liberty, and have plenty of money, than remain confined in a dungeon. The Attorney-General replied to this defence of insanity, that, before it could have any weight in rebutting a charge so clearly made out, the jury must be properly satisfied, that at the time when the crime was committed, the prisoner did not really know right from wrong. And the jury, after hearing the evidence summed up, without hesitation, pronounced the prisoner guilty (d).

Thomas Bowler was tried at the Old Bailey on the 2nd July, 1812, for shooting at, and wounding William Burrowes. The defence set up for the prisoner was, insanity occasioned by epilepsy ; and it was proved, that the prisoner was seised with an epileptic fit on the 9th July, 1811, and was brought home apparently lifeless, since which time a great alteration in his

(c) *Arnold's case*, 16 Vol. Howell's St. Tr. pp. 764, 765.

(d) *Parker's case*, tried by a spe-

cial commission in Horsemonger Lane, 11 February, 1812, for high treason, 1 Coll. on Lun. 477.

conduct and demeanour was perceived; that he would frequently rise at nine o'clock in the morning, eat his meal almost raw, and lie in the grass exposed to the rain; and that his spirits were 'so dejected, that it was necessary to watch him, lest he should destroy himself. Mr. Warburton, the keeper of a lunatic asylum, deposed that it was characteristic of insanity occasioned by epilepsy for the patient to imbibe violent antipathies against particular individuals, even his dearest friends, and to have a desire of taking vengeance upon them, from causes wholly imaginary, which no persuasion could remove; and that yet the patient might be rational and collected upon every other subject. He had no doubt of the insanity of the prisoner, and said he could not be deceived by assumed appearances. A commission of lunacy was also produced, dated 17th June, 1812, and an inquisition taken upon it, whereby the prisoner was found insane, and to have been so from the 30th March preceding. Mr. Justice *Le Blanc*, after summing up the evidence, concluded by observing to the jury, that it was for them to determine whether the prisoner, when he committed the offence with which he stood charged, was incapable of distinguishing right from wrong, and not under the influence of any *illusion* in respect of the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit; since, in that case, he would not be legally responsible for his conduct. On the other hand, provided they should be of opinion that, when he committed the offence, he was capable of distinguishing right from wrong, and not under the influence of such an illusion as disabled him from discerning that he was doing a wrong act, he would be amenable to the justice of his country, and guilty in the eye of the law. The jury, after considerable deliberation, pronounced the prisoner guilty, and he was afterwards executed (*e*).

In *Bellingham's* case, who was tried for the murder of Mr.

(*e*) *Bowler's* case, Old Bailey, p. 309; *Reg. v. Higginson*, 1 Car. 2nd July, 1812; see 1 Coll. on Lun. p. 673; Annual Reg. 54 Vol. & K. 129.

Perceval, a part of the prisoner's defence, not urged by himself, but by his counsel, was insanity; and, upon this part of the case, *Mansfield*, Chief Justice, is reported to have stated to the jury, that, in order to support such a defence, it ought to be proved by the most distinct and unquestionable evidence, that the prisoner was incapable of judging between right and wrong; that, in fact, it must be proved beyond all doubt, that, at the time he committed the atrocious act with which he stood charged, he did not consider that murder was a crime against the laws of God and nature; and that there was no other proof of insanity which would excuse murder, or any other crime. That, in the species of madness called lunacy, where persons are subject to temporary paroxysms, in which they are guilty of acts of extravagance, such persons committing crimes when they are not affected by the malady would be, to all intents and purposes, amenable to justice; and that, so long as they could distinguish good from evil, they would be answerable for their conduct. And that, in the species of insanity in which the patient fancies the existence of injury, and seeks an opportunity of gratifying revenge by some hostile act, if such person be capable in other respects of distinguishing right from wrong, there would be no excuse for any act of atrocity which he might commit under this description of derangement (*f*). The prisoner was found guilty, and executed.

A man was indicted for shooting at his wife with intent to murder her, &c., and was defended by counsel, who set up for him the defence of insanity. The prisoner, however, objected to such a defence, asserting that he was not insane; and he was allowed by the Judge to suggest questions to be put by the learned Judge to the witnesses for the prosecution, to negative the supposition that he was insane; and the Judge, also at the request of the prisoner, allowed additional witnesses to be called on his behalf for the same purpose; they, however, failed in shewing that the defence was an incorrect one;

(*f*) *Bellingham's* case, Old Bailey, 15th May, 1812; 1 Coll. on Lun. 636. The doctrine of Chief Justice

Mansfield was recognised by Lord *Lyndhurst* in *Offord's* case, 5 Carr. & Payne, 168.

and, on the contrary, their evidence tended to establish it more clearly; and the prisoner was acquitted on the ground of insanity (g).

James Hadfield was tried in the Court of King's Bench, in the year 1800, on an indictment for high treason, in shooting at the King in Drury Lane Theatre; and the defence made for the prisoner was insanity. It was proved, that he had been a private soldier in a dragoon regiment, and, in the year 1793, received many severe wounds in battle, near Lisle, which had caused partial derangement of mind, and he had been dismissed from the army on account of insanity. Since his return to this country he had been annually out of his mind, from the beginning of spring to the end of the dog days, and had been under confinement as a lunatic. When affected by his disorder, he imagined himself to hold intercourse with God; sometimes called himself God, or Jesus Christ, and used other expressions of the most irreligious and blasphemous kind; and also committed acts of the greatest extravagance; but at other times he appeared to be rational, and discovered no symptoms of mental incapacity or disorder. On the 11th of May preceding his commission of the act in question, his mind was very much disordered, and he used many blasphemous expressions. At one or two o'clock on the following morning, he suddenly jumped out of bed, and alluding to his child, a boy of eight years old, of whom he was usually remarkably fond, said he was about to dash his brains out against the bed-post, and that God had ordered him to do so; and upon his wife screaming, and his friends coming in, he ran into a cupboard, and declared he would lie there, it should be his bed, and God had said so; and when doing this, having upset some water, he said he had lost a great deal of blood. On the same and the following day he used many incoherent and blasphemous expressions. On the morning of the 15th of May he seemed worse, said that he had seen God in the night, that the coach was waiting, and that he had been to dine with the King. He spoke very highly of the King, the royal

(g) *Reg. v. Pearce*, 9 Car. & P. 667.

family, and particularly of the Duke of York. He then went to his master's workshop, whence he returned to dinner at two, but said that he stood in no need of meat, and could live without it. He asked for tea between three and four o'clock, and talked of being made a member of the society of odd fellows; and, after repeating his irreligious expressions, went out and repaired to the theatre. On the part of the Crown, it was proved that he had sat in his place in the theatre nearly three quarters of an hour before the King entered: that at the moment when the audience rose, on his Majesty's entering his box, he got up above the rest, and, presenting a pistol loaded with slugs, fired it at the King's person, and then let it drop; and when he fired, his situation appeared favourable for taking aim, for he was standing upon the second seat from the orchestra in the pit; and he took a deliberate aim, by looking down the barrel, as a man usually does when taking aim. On his apprehension, amongst other expressions, he said, that "he knew perfectly well his life was forfeited; that he was tired of life, and regretted nothing but the fate of a woman who was his wife, and would be his wife a few days longer, he supposed." These words he spoke calmly, and without any apparent derangement; and, with equal calmness, repeated that he was tired of life, and said that his plan was to get rid of it by other means: he did not intend any thing against the life of the King; he knew the attempt only would answer his purpose."

The counsel for the prisoner (*h*), in his very able address to the jury, put the case as one of a species of insanity, in the nature of a *morbid delusion* of the intellect, and admitted that it was necessary for them to be satisfied that the act in question was the immediate unqualified offspring of the disease. And Lord *Kenyon* held, that as the prisoner was deranged immediately before the offence was committed, it was improbable that he had recovered his senses in the interim, and although, were they to run into nicety, proof might be demanded of his insanity at the precise moment when the act was com-

(*h*) The late Lord *Erskine*, then at the Bar.

mitted; yet, there being no reason for believing him to have been at that period a rational and accountable being, he ought to be acquitted. The jury returned a verdict of “not guilty;” it appearing to them that the prisoner was under the influence of insanity when the act was committed (*i*).

In the trial of Oxford for shooting at the Queen, Lord Denman, C. J., in summing up, said upon the whole evidence “the question will be whether all that has been proved about the prisoner, shews that he was insane at the time when the act was done—whether the evidence given, proves a disease in the mind as of a person quite incapable of distinguishing right from wrong. Something has been said about the power to contract and make a will; but I think that those things do not supply any test. The question is, whether the prisoner was labouring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing; or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act, that it was a crime” (*k*).

If a man in his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner become mad, he shall not be tried: as he cannot make his defence. If, after he has been tried and found guilty, he lose his senses before judgment, judgment shall not be pronounced; and if, after judgment he becomes of non-sane memory, execution shall be stayed; for, peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution (*l*). Indeed, in the reign of Henry 8, a statute (*m*) provided that if a person, being *compos mentis*, should commit high treason, and after fall into madness, he might have been tried in his absence, and executed as if he had

(*i*) *Hadfield's case*, Howell's St. Tr. Vol. 27, p. 1281.

(*l*) 4 Bl. Comm. 25; 1 Hale, P. C. 34.

(*k*) *Reg. v. Oxford*, 9 Car. & P. 547.

(*m*) 33 Hen. 8, c. 20.

been of perfect memory. But that cruel and inhuman statute was repealed by 1 & 2 Phil. and Mary, c. 10. For as is observed by Sir *E. Coke* (*n*), “the execution of an offender is for example *ut pœna ad paucos metus ad omnes perveniat*, and the execution of a madman would be a miserable spectacle, and could be no example to others.”

By the common law, if it be doubtful whether a criminal, who at his trial is in appearance a lunatic, be such in truth or not, the fact shall be investigated (*o*). And it appears, that it may be tried by the jury, who are charged to try the indictment (*p*) by an inquest of office to be returned by the sheriff of the county wherein the Court sits (*q*); or, being a collateral issue, the fact may be pleaded and replied to *ore tenus*, and a *venire* awarded returnable *instante*, in the nature of an inquest of office (*r*).

In Frith’s case, who was arraigned for high treason, the jury was sworn to inquire, whether the prisoner was of sound mind and understanding or not. It was observed by the Court in that case, that the inquiry was not whether the prisoner was in that unfortunate state of mind when the accident happened, nor was it necessary to discuss or inquire at all, what effect his present state of mind might have whenever that question came to be discussed; but the humanity of the law of England falling into that which common humanity, without any written law would suggest, has prescribed, that no man shall be called upon to make his defence, at a time when his mind is in that situation as not to appear capable of so doing; for, however guilty he may be, the inquiring into his guilt must be postponed to that season, when, by collecting together his intellects, and having them entire, he shall be able so to model his defence as to ward off the punishment of the law; it was for the jury, therefore, to inquire, whether the prisoner was then in that

(*n*) 3 Inst. 6.

(*o*) 1 Hawk. P. C. c. 1, s. 4.

(*p*) 1 Hale, P. C. 33, 35, 36; 1 Hawk. P. C. c. 1, s. 4, note (5).

(*q*) 1 Hawk. P. C. c. 1, s. 4; 1 And. 107; 1 Sav. 50, 56; 1 Hale, P. C. 35.

(*r*) Fost. 46; Kel. 13; 1 Lev. 61; 1 Sid. 72. And the proceeding by inquest *ex officio*, is recommended in cases of importance, doubt, or difficulty; 1 Hale, P. C. 35; Sav. 56; 1 And. 154; see 1 Hawk. P. C. c. 1, s. 4, note (5).

state of mind ; and the jury returned a verdict, that the prisoner was quite insane (*s*).

In a case where a prisoner had pleaded not guilty to an indictment, for the murder of his wife and child, and was said to be insane, the jury was sworn to try whether “the prisoner is insane by visitation of God, or whether, of deceit and covin, he counterfeits insanity ;” the prisoner having been found by the jury to be insane, was ordered to be detained in custody (*t*).

If it be found that the party only feigns himself mad, and he refuse to answer or plead, he would formerly have been dealt with as one who stood mute ; but now a plea of not guilty may be entered under the stat. 7 & 8 Geo. 4, c. 28, s. 2 (*u*). But in case a person in a phrensy happens by some oversight, or by means of the gaoler, to plead to his indictment, and is put upon his trial, and it appears to the Court upon his trial that he is mad, the Judge, in his discretion, may discharge the jury of him, and remit him to gaol to be tried after the recovery of his understanding, especially, in case any doubt appears upon the evidence touching his guilt, and this in *favorem vitæ* ; and if there be no colour of evidence to prove him guilty, or if there be pregnant evidence to prove his insanity at the time of the fact committed, then it is fit that the trial proceed, in order to his acquittal (*v*).

Although persons who have committed crimes under the influence of insanity are excused from punishment, the public safety requires that such persons should be prevented from perpetrating new acts of violence, and endangering the lives of others ; and it seems that, by the common law, when persons of this kind were acquitted, the Courts before which they were tried had power to direct them to be detained in safe custody.

In case any person charged with treason, murder, or felony, or any misdemeanor, proving to be insane at the time of the commission of such offence, be acquitted, the jury are to declare

(*s*) How. St. Tr. Vol. 22, p. 307—318.

(*t*) *Turner's case*, Norfolk Lent Assizes, 30 March, 1832, before Mr. Baron Gurney ; *Ley's Case*, 1 Lewin, 239.

(*u*) 1 Hawk. P. C. B. 1, c. 1, s. 4 ; B. 2, c. 30 ; Vin. Abr. tit. Lun. (E).

(*v*) 1 Hale, P. C. 36, per Foster, J. 18 St. Tr. 411 ; 7 Ad. & E. 537 n ; 1 Russ. on Crimes, p. 13.

whether he was acquitted by them on account of insanity: and if they so find, the Court shall order him to be kept in custody till the Sovereign's pleasure be known (*w*).

If upon the trial of any person indicted for *any offence*, such person shall appear to the jury charged with such indictment to be insane, the Court before whom any such person shall be brought to trial as aforesaid, may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody, until the Sovereign's pleasure shall be known. And if any person charged with any offence, shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, such Court may order a jury to be impanelled to try the sanity of such person; and if the jury so impanelled shall find such person to be insane, such Court may order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until the Sovereign's pleasure shall be known (*x*).

The provisions of the 39 and 40 Geo. 3, c. 94, ss. 1 and 2, are extended to Ireland by statute 1 & 2 Geo. 4, c. 33, ss. 16 and 17, and further provision is made for the prevention of offences by insane persons in Ireland, by 1 & 2 Vict. c. 27, and 8 & 9 Vict. c. 107, ss. 10, 11.

Where a prisoner indicted for misdemeanor in uttering seditious words, upon his arraignment shewed symptoms of insanity, and an inquest was forthwith taken under the above statute:—It was held, that the jury might form their judgment of the state of his mind from his demeanour while the inquest was being taken, and might thereupon find him to be insane without any evidence being given as to his present state; and that it was unnecessary to ask him whether he would cross-examine the witnesses, or offer any remarks or evidence, as that would be a useless prolongation of a painful proceeding (*y*).

(*w*) 39 & 40 Geo. 3, c. 94, s. 1; 3 & 4 Vict. c. 54, s. 3; Burrow's Case, 1 Lewin, 238.

(*x*) 39 & 40 Geo. 3, c. 94, s. 2.

(*y*) *Reg. v. Goode*, 7 Ad. & E. 536. The jury were sworn in *hæc verba*, "You shall diligently in-

quire and true presentment make for and on behalf of our Sovereign Lady the Queen, whether J. H. the defendant be insane or not, and a true verdict give according to the best of your understanding. So help you God."

If a prisoner have not at the time of the trial, from the defect of his faculties, sufficient intelligence to understand the nature of the proceedings against him, the jury ought to find that he is not sane, and upon such finding he may be ordered to be kept in custody under 39 & 40 Geo. 3, c. 94 (2).

A person deaf and dumb, was to be tried for a capital felony; the Judge ordered a jury to be impanelled, to try whether he was mute by the visitation of God; the jury found that he was so. The jury were then sworn to try whether he was able to plead, which they found in the affirmative, and the prisoner by a sign pleaded not guilty. The Judge then ordered the jury to be sworn to try whether the prisoner was now sane or not; and on that question his Lordship directed the jury to consider whether the prisoner had sufficient intellect to comprehend the course of the proceedings, so as to make a proper defence, to challenge any juror he might wish to object to, and to comprehend the details of the evidence; and if they thought he had not, they should find him not of sane mind. The jury did so, and the Judge ordered the prisoner to be detained under the statute 39 & 40 Geo. 3, c. 94, s. 2 (a).

A grand jury have no authority by law to ignore a bill for murder on the ground of insanity, though it appear clearly from the testimony of the witnesses, as examined by them on the part of the prosecution, that the accused was in fact insane; but if they believe that the acts, if they had been done by a person of sound mind, would have amounted to murder, it is their duty to find the bill, otherwise the Court cannot order the detention of the party during the pleasure of the Crown, as it can either on arraignment or trial under the statute 39 & 40 Geo. 3, c. 94 (b).

If the jury are of opinion that the prisoner did not in fact do all that the law requires to constitute the offence charged, supposing the prisoner had been sane they must find him not

(2) *Reg. v. Dyson*, 7 Carr. & P. P. 303.

305 n., 1 Lewin, 64.

(b) *Reg. v. Hodges*, 8 C. & P.

(a) *Rex v. Pritchard*, 7 Carr. & 195.

guilty generally, and the Court have no power to order his detention under the act 39 & 40 Geo. 3, c. 94, although the jury should find that he was in fact insane. Where, therefore, on an indictment for treason, which stated as an overt act that the prisoner discharged a pistol loaded with powder and a bullet, the jury found that the prisoner was insane at the time when he discharged the pistol, but whether the pistol was loaded with ball or not there was no satisfactory evidence, the Court expressed a strong opinion that the case was not within the statute (*c*).

It was decided that the second section of the act 39 & 40 Geo. 3, c. 94, extended to all offences; and that a prisoner might be detained under it who had been acquitted of a misdemeanor on the ground of his insanity at the time of the commission of the offence and at the trial (*d*).

The same provision is now made as to persons charged with misdemeanors as was made respecting persons charged with treason, murder, or felony, by the statute 39 & 40 Geo. 3, c. 94, and the former persons if acquitted on the ground of insanity, may be kept in custody (*e*).

If any person while imprisoned under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour, or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the peace, or under any other than *civil* process, shall appear to be insane, two justices may inquire with medical aid respecting such insanity. Such prisoners, if certified to be insane, may be removed by the order of a secretary of state to a lunatic asylum until it has been certified that such person has become of sound mind, whereupon a warrant for removal of such person back to prison, or for his discharge, is to be granted (*f*).

A person who loses his memory by sickness, infirmity, or

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| (<i>c</i>) <i>Reg. v. Oxford</i> , 9 C. & P. | Cr. Cas. 430. |
| 525; 1 Russ. C. & M. by Greaves, | (<i>e</i>) 3 & 4 Vict. c. 54, s. 3. |
| 16. | (<i>f</i>) 3 & 4 Vict. c. 54, s. 1; see |
| (<i>d</i>) <i>Rex v. Little</i> , Russ. & Ryan's | stat. in Appendix. |

accident, and kills himself, is not considered in law a *felo de se* (g). But if a lunatic in a lucid interval kills himself, he is a *felo de se* (h). So, if a man gives himself a mortal stroke while he is *non compos*, and recovers his understanding, and then dies, he is not *felo de se*; for, though the death completes the homicide, the act must be that which makes the offence. But it is not every melancholy or hypochondriacal distemper that denominates a man *non compos*, for there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind as renders them madmen, or frantic, or destitute of the use of reason (i).

SECTION II.

Of Misdemeanors respecting lunatics.

A *non compos* is not only excused in the commission of criminal offences, but is entitled to the protection of the law against injuries from the hands of others, and especially those of a nature to which his mental incapacity peculiarly exposes him. Thus, upon a representation that a lady who was too weak and infirm to be brought into Court, was in the hands of improper persons, who were using artifices to obtain from her the execution of a will, when her state of mind rendered her incapable of making a legal testament—a rule was made to shew cause why an information should not be exhibited against them for the misdemeanors charged in the affidavits, and certain medical and other persons were directed to have continual access to her. She died, however, the next day (a).

There is no legal obligation on one brother to maintain another, so as to make the omission indictable. A brother was

(g) 3 Inst. 54.

(h) Hale's P. C. 412.

(i) Ibid. As to the act of suicide being evidence of insanity, see

ante, 65—67; *Schwabe v. Clift*, 2 Carr. & K. 134.

(a) *Rex v. Wright*, Burr. 1099; see *Regina v. Dr. Fellows*, Fortes. 166.

held not to be indictable for an omission who having his idiot brother who was helpless, as an inmate in his house, had omitted to supply the idiot with proper food, warmth, &c. (b).

If one has an idiot brother who is bed-ridden in his house, and keeps him in a dark room without sufficient warmth or clothing, proof of that will not support an indictment for an assault or an imprisonment; as it is an omission without a duty which will not create an indictable offence (c).

The second count of the indictment charged that the defendant contriving, &c., to injure B. S., (who was her illegitimate son) being a person of unsound intellect, and incapable of taking care of himself, did, "*whilst*" the said B. S. was under the care, custody and control of the defendant, and whilst the defendant received divers sums of money for his support and maintenance, unlawfully confine him in an unwholesome room, and neglect to clothe him, and suffer him to be covered with filth, &c.

The third count charged that B. S. was the illegitimate son of the defendant, and was of unsound intellect, and that the defendant had ample and sufficient means for the comfortable support and maintenance of herself and the said B. S., whereupon it became and was the duty of the defendant to take due and proper care of the said B. S., yet she neglected to do so, and confined him (as before):—It was held, on motion for arrest of judgment, that the second count was bad for not containing a direct averment that B. S. was ever under the care or control of the defendant. It was held, also, that the third count was bad for want of any allegation, shewing it to be the duty of the defendant to take care of him, or that any injury resulted to B. S. by the acts of the defendant, or was the necessary consequence of them (d).

The state of houses kept for the reception of lunatics attracted the attention of the Legislature many years ago, when a committee was appointed by the House of Commons to inquire into the state of such houses. The attention of the

(b) *Rex v. Smith*, 2 Carr. & P. 449. 3rd ed.

(c) *Id.* see *Reg. v. Marriott*, 8 Car. & P. 425; 1 Russ. on C. & M. 752, (d) *Reg. v. Pelham*, Law J. 1846, M. C. 105; 10 Jur. 659.

committee appears on that occasion to have been directed to two points:—First, the manner of admitting persons into the houses then kept for the reception of lunatics. And secondly, the treatment of them during their confinement. The committee, in the course of their inquiries, and on the examination of witnesses detected many flagrant abuses, and came to the resolution that, at that time, the state of madhouses in this kingdom required the interposition of the Legislature; and leave was given to bring in a bill for the regulation of private madhouses (*e*).

The statute 14 Geo. 3, c. 49, repealed by 9 Geo. 4, c. 41, was passed for regulating madhouses, which contained provisions as to granting licenses for keeping them, the visitation of them, the admission of patients into them, and other matters.

In the years 1815 and 1816, extensive inquiries were made by a committee of the House of Commons appointed to consider of provision being made for the better regulation of madhouses in England, before whom much important evidence and information were given. In the course of their investigations, such atrocities and abuses in the treatment of the unfortunate persons confined in such houses were detected and brought to light as would be disgraceful to the annals of any country, and are a foul blot on the history of a nation whose inhabitants boast of superior claims to the character for humanity and civilization (*f*).

The committee resolved, that some new provision of law was indispensably necessary for insuring better care being taken of insane persons, both in England and Ireland, than they had before experienced, as the inquiries of the committee had convinced them, that there were not in the country a set of beings more immediately requiring the protection of the Legislature than the persons in this state, a very large proportion of whom were entirely neglected by their relations and friends.

The committee called the attention of the House to the

(*e*) Commons' Journals, 1763, in the Edinburgh Review, Vol. 28, Vol. 29, pp. 486—489. pp. 432—474.

(*f*) See an article on this subject

following abuses in the management of the houses kept for the reception of lunatics:—

First, The keepers of such houses received a much greater number of persons for confinement than such houses were calculated to accommodate, which were more adapted for the imprisonment than the cure of patients (*g*).

Secondly, The insufficiency of the number of keepers in proportion to the number of persons intrusted to their care, unavoidably leading to a proportionably greater degree of restraint than the patients would otherwise be under.

Thirdly, The mixing patients who were *outrageous* with those who were *quiet* and inoffensive; and those who were insensible to the calls of nature, with others who were cleanly (*h*).

Fourthly, The want of medical assistance, as *applied to the malady* for which the persons were confined, although it appeared by the most satisfactory evidence of medical men that, where the mental faculties are only partially affected, which is the case in seven-eighths of the cases, medical assistance is of the highest importance.

Fifthly, The restraint of persons much beyond what was

(*g*) Dr. *Latham* imputed blame to the relatives of the unfortunate people in shutting them up in mad-houses in order that they may be out of the way, and said, “in nine cases out of ten, that is the fact, and that little attention is paid on the part of their relatives to such as are confined, who, by proper treatment, might more frequently be relieved.” 1 Rep. 1815, p. 112. Dr. *Powell* said, “The management of insanity requires the practice of separation, according to the state of the disease, which was never done in this country. Insane houses are places which seem rather intended for the confinement and imprisonment of lunatics, but not one of them seems fully calculated for the cure of them.” 1 Rep. 1815, p. 76.

(*h*) In support of a position so obvious to common sense, it may not perhaps be irrelevant to quote the opinion of an eminent philosopher, who observed—“It is a question worthy of more attention than has yet been bestowed upon it by physicians, whether certain kinds of insanity have not a contagious tendency. That the incoherent ravings and frantic gestures of a madman have a singularly painful effect in unsettling and deranging the thoughts of others I have more than once experienced in myself; nor have I ever looked upon this most afflicting of all spectacles, without a strong impression of the danger to which I should be exposed, if I were to witness it daily.” Vol. 3, *Stew. Phil. of the Human Mind*, p. 207.

necessary, certainly retarding recovery, even beyond what was occasioned by the crowded state of the houses.

Sixthly, Detentions of persons, the state of whose minds did not require confinement.

Seventhly, The insufficiency of certificates on which patients were received into the madhouses, and the defective visitation of private madhouses, under the provisions of the 14 Geo. 3, c. 49 (*i*).

In the year 1827, further inquiries were made by the select committee of the House of Commons appointed to inquire into the state of the pauper lunatics in the county of Middlesex; to consider the propriety of extending the provisions of the 14 Geo. 3, c. 49, to pauper lunatics; and of the consolidation of all acts relative to lunatics and lunatic asylums, and of making further provisions relative thereto (*k*).

In 1828 (*l*), two acts were passed, 9 Geo. 4, cc. 40, 41, the latter to regulate the care and treatment of insane persons; and the former to consolidate the laws relating to the erection, maintenance, and regulation of county lunatic asylums, and to the care and maintenance of lunatics being paupers, or criminals, in England (*m*).

The statute 9 Geo. 4, c. 41, to regulate the treatment of insane persons, after having been amended by 10 Geo. 4, c. 18, was repealed with the latter act by 2 & 3 Wm. 4, c. 107. The 2 & 3 Wm. 4, c. 107, was a temporary act to continue for three years, and after having been amended by the 3 & 4 Wm. 4, c. 64, was continued by subsequent acts for successive periods of three years (*n*).

(*i*) See Report from the Committee of the House of Commons on Madhouses in England, ordered by the House of Commons to be printed, 11 July, 1815; Three Reports of Minutes of Evidence, 25th May, 1815; 2nd June, 1815; 12th June, 1815; First, Second, and Third Reports in 1816, ordered to be printed, 18th May, 1819.

(*k*) See Report ordered, by the

House of Commons to be printed, 29th June, 1827.

(*l*) See Debate in the Commons, 1828; *Mirroure of Parl.* pp. 265, 269, 672, 1183—5.

(*m*) See Minutes of Evidence taken before the select Committee of the House of Lords, to whom the above bills were referred, ordered to be printed, 1st May, 1828.

(*n*) 5 & 6 Wm. 4, c. 22; 1 & 2

The act 2 & 3 Wm. 4, c. 107, related to all licensed lunatic asylums throughout England and Wales; and directed certain of the metropolitan commissioners (amongst other things) to visit the several licensed houses within the limits of the county of Middlesex, and of certain specified portions of Surrey and Kent, (called the Metropolitan District) four times in each year, and to report to the Lord Chancellor as to their condition. That act also directed, that three justices, together with a medical attendant, should be appointed at the general quarter sessions to visit all houses licensed for lunatics, in the various counties of England, three times in every year.

The act 5 & 6 Vict. c. 87, (repealed by 8 & 9 Vict. c. 100, s. 1,) related to all lunatic asylums in England and Wales, whether private or public, except to the Hospital of Bethlem; and by that act certain of the Metropolitan Commissioners were directed twice a year to visit and report on the licensed asylums in the provinces, and once a year to visit and report on the county and other asylums regulated under the act of 9 Geo. 4, c. 40, and the Lord Chancellor was also empowered to direct the commissioners to visit the Royal Military and Naval Hospitals, and all other public asylums for the reception of insane persons in England and Wales, except the Hospital of Bethlem.

Under the powers conferred by the above acts the Metropolitan Commissioners in Lunacy inspected the condition of various public and private asylums throughout England and Wales, and reported to the Lord Chancellor the result of their experience (*o*).

The public attention was called to this report by Lord Vict. c. 73; 5 Vict. sess. 2, c. 4; 5 & 6 Vict. c. 87.

(*o*) Report of the Metropolitan Commissioners in Lunacy to the Lord Chancellor, presented to Parliament in 1844. The subject was divided into the following heads:—
I. The different classes of lunatic asylums, their construction, condition, management, and visitation;
II. Condition of paupers on admis-

sion; III. Forms of disease, medical treatment, diet, and classification; IV. Occupations and amusements; V. Restraint; VI. Religious services; VII. The admission and liberation of patients; VIII. Statistics of insanity; IX. Criminal lunatics; X. Wales; a supplemental report relative to the general condition of the insane in Wales was afterwards published.

Ashley's speech in the House of Commons in 1844 (*p*), and in the following year the Legislature passed the acts now in force: one to regulate the care and treatment of lunatics (*q*), and the other to amend the laws for the provision and regulation of lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics in England (*r*).

These statutes, which are printed in the Appendix, contain a great variety of minute provisions, the nature of which will be easily found by consulting the index to them at the end of this work. It will suffice in this place to point out some of the regulations as to the admission of lunatics into asylums, and the acts by which parties will incur the guilt of a misdemeanor.

Admission of lunatics on medical certificates.—No person, (not a pauper), whether being or represented to be a lunatic, or only a boarder or lodger, in respect of whom any money shall be received, or agreed to be received, for board, lodging, or any other accommodation, shall be received into or detained in any licensed house, and no person, (not a pauper), shall be received into or detained as a lunatic in any hospital, without an order in the form and stating the particulars required by 8 & 9 Vict. c. 100, nor without the medical certificates, according to the form prescribed by that act, of two physicians, surgeons, or apothecaries, who shall not be in partnership, and each of whom shall have separately and personally examined the person to whom it relates not more than seven clear days previously to the reception of such person into such house or hospital, and shall have signed and dated the same on the day on which such person shall have been so examined (*s*). Every person receiving or detaining any such person as aforesaid, in any such house or hospital as aforesaid, without such order and medical certificates, and any physician, surgeon, or apothecary, knowingly signing any such medical certificate, which

(*p*) 76 Vol. Hans. pp. 1257—1287; see 81 Hans. pp. 180—202, 82 Hans. 1186—1193.

(*q*) 8 & 9 Vict. c. 100.

(*r*) 8 & 9 Vict. c. 126.

(*s*) 8 & 9 Vict. c. 100, s. 45.

shall untruly state any of the particulars required by that act, will be guilty of a misdemeanor (*t*).

The medical practitioner, signing any such certificate, is required to specify therein the facts upon which he has formed his opinion that the person is insane (*u*). Under special circumstances a person may be received into any such house or hospital on a certificate signed by one medical practitioner, but the detention of such person beyond three days, without a further certificate signed by another medical practitioner not connected with such house or hospital, makes the person receiving guilty of a misdemeanor (*v*).

Admission of paupers into licensed house or hospital.—No pauper shall be received into or detained in any licensed house, or any hospital, without an order and statement, prescribed by the act 8 & 9 Vict. c. 100, under the hands of one justice, or an officiating clergyman, with the relieving officer or one of the overseers of the union or parish from which such pauper shall be sent, who shall have personally examined such pauper previously to signing such order, nor without a medical certificate, prescribed by the act, and dated not more than seven clear days previously to the reception of such pauper into such house or hospital; and every such certificate shall be signed by a physician, surgeon, or apothecary, (not being the medical officer of such parish or union), on the day whereon he shall examine such pauper; and every person who shall receive any pauper into any such house or hospital as aforesaid, without such order and medical certificate as last aforesaid, shall be guilty of a misdemeanor (*w*).

No medical practitioner, who or whose father, brother, son, or partner, is interested in or attends professionally in a licensed house or hospital, shall sign a certificate for admission of a patient into such place. Any medical practitioner not complying with the provisions of the act as to a certificate,

(*t*) 8 & 9 Vict. c. 100, s. 45.

(*u*) *Ib.* s. 46.

(*v*) *Ib.* s. 47.

(*w*) 8 & 9 Vict. c. 100, s. 48; see also 8 & 9 Vict. c. 126, ss. 51—53, *post*, p. 611.

, describing his medical qualification untruly, or untruly stating any thing therein, is guilty of a misdemeanor (*x*).

No person (except a person deriving no profit or a committee) shall take charge of any *single lunatic*, without an order and certificates similar to those already specified. Copies of the order and certificates—a statement of the date of the reception—the situation of the house—and name of the occupier are required to be sent to the Secretary of the Commissioners in Lunacy. The act requires that the lunatic shall be visited by a medical practitioner once a fortnight, who shall enter his visits in a book, and that the person having charge of the patient shall transmit certain notices and statements to such Secretary. Persons not observing the above requisitions, or a medical attendant making an untrue entry in the medical visitation book, are guilty of a misdemeanor (*y*).

It is a misdemeanor for any superintendent, officer, nurse, attendant or other person employed in any licensed house or registered hospital, in any way to abuse or illtreat any patient confined therein, or wilfully to neglect any such patient (*z*). In the event of the release of any person from confinement in any asylum or private house, who shall consider himself to have been unjustly confined, a copy of the certificates and order upon which he has been confined shall, at his request, be furnished to him or his attorney, by the Clerk to the Commissioners without any fee (*a*). The Home Secretary on the report of the Commissioners or visitors of any asylums, may direct the Attorney General to prosecute any person who shall have been concerned in the unlawful taking or confinement of any of the Queen's subjects as an insane patient, and likewise any person who shall have been concerned in the neglect or illtreatment of any patient or person so confined (*b*).

Any superintendent, officer, nurse, attendant, or other person employed in any asylum under the regulations of the act 8 & 9 Vict. c. 126, who shall in any way abuse, illtreat, or

(*x*) 8 & 9 Vict. c. 100, s. 49.

(*y*) *Ib.* s. 90.

(*z*) *Ib.* s. 56.

(*a*) *Ib.*

(*b*) *Ib.*

wilfully neglect any lunatic confined therein, will be guilty of a misdemeanor (*c*).

There are several other acts and omissions by which parties will become guilty of a misdemeanor—thus for any disqualified person to take, or having become disqualified to continue to act in the capacity of commissioner, visitor, secretary, clerk, or assistant clerk (*d*)—to give an untrue or incorrect notice, plan, statement, or description of the things required therein (*e*)—to make a false return of the number and class of patients in the application for the renewal of a license (*f*)—to receive two or more lunatics into any house not duly licensed, or into an asylum or an hospital not duly registered (*g*)—to make a false entry of any particulars in the book of admissions (*h*)—for any proprietor or superintendent of any licensed house or hospital not to transmit notice of the reception of a patient (*i*)—not to make an entry and give notice of the death, discharge, or removal of any patient (*k*)—for any physician, surgeon, or apothecary, to make a false entry in his report (*l*)—for the proprietor or superintendent of any licensed house or hospital, not to show every part thereof, and every patient therein, to the commissioners or visitors (*m*), or to answer falsely, or not to answer their questions (*n*)—to omit to transmit the minutes made by visiting commissioners as to doubtful patients in a house licensed by justices, and for every clerk not communicating such omission to the visitors (*o*)—and to detain a patient in an unlicensed house or in charge for three days after service of the Lord Chancellor's order for removal (*p*). Pecuniary penalties are also imposed for a variety of other acts and omissions (*q*).

It may be observed that parties may become guilty of a misdemeanor by the non-observance of other provisions in the

(*c*) 8 & 9 Vict. c. 126, s. 77.

(*d*) 8 & 9 Vict. c. 100, s. 23.

(*e*) *Ib.* s. 27.

(*f*) *Ib.* s. 29.

(*g*) *Ib.* s. 44.

(*h*) *Ib.* s. 50.

(*i*) *Ib.* s. 52.

(*k*) *Ib.* s. 54.

(*l*) *Ib.* s. 59.

(*m*) *Ib.* s. 63.

(*n*) *Ib.* s. 64.

(*o*) *Ib.* s. 68.

(*p*) *Ib.* s. 93.

(*q*) See Index, *Penalty*.

statutes, as it is a misdemeanor wilfully to contravene the provisions of a statute (*r*).

The secretary of the commissioners in lunacy on their order, and the clerk of any visitors on their order, may prosecute any person for any offence against the act 8 & 9 Vict. c. 100, and sue for any penalty under it, but it shall not be lawful for any one to prosecute for any such offence, or to sue for any such penalty, except by order of the commissioners, or of the visitors having jurisdiction in the place where the cause of prosecution arose or the penalty was incurred, or with the consent of the Attorney, or Solicitor-General (*s*).

No pauper shall be received into any *asylum*, *registered hospital*, or *licensed house*, without the order of one justice, or officiating clergyman, with one of the overseers or the relieving officer of the parish or union from which the pauper shall be sent, nor without a medical certificate (*t*). It is a misdemeanor to receive any pauper into an *asylum* without such order and medical certificate (*u*).

It is also a misdemeanor to receive or detain any person *not* being a pauper into any *asylum* without the order and the medical certificates prescribed by the act (*v*).

Any physician, surgeon, or apothecary knowingly signing any such medical certificate which shall untruly state any of the particulars required by the act, will be guilty of a misdemeanor. The certificate of the medical officer of the asylum will not avail (*w*).

Every clerk of an asylum who shall knowingly and wilfully make any false entries of the particulars required to be made of the death, discharge, or removal of any lunatic, shall be guilty of a misdemeanor (*x*).

Liberation of patients.—Any two or more of the commissioners may visit any patient detained in a house licensed

(*r*) *Rex v. Sainsbury*, 4 T. & R. 457; 1 Russ. on Crimes, 49, 3rd ed.

(*s*) 8 & 9 Vict. c. 100, s. 106, see s. 102; see *ante*, pp. 519, 520.

(*t*) 8 & 9 Vict. c. 126, s. 51.

(*u*) *Ib.*

(*v*) *Ib.* s. 52.

(*w*) *Ib.* s. 53; see also 8 & 9 Vict. c. 100, ss. 45—49; *ante*, pp. 608, 609.

(*x*) 8 & 9 Vict. c. 126, s. 76.

by the commissioners, on such days, and at such hours as they shall think fit, and if after two separate visits (seven days intervening between such visits), it shall appear that such patient is detained without sufficient cause, he may be discharged by the commissioners' order (*y*). Two or more commissioners, one being a physician and one a barrister, may make special visits to any patient detained in any house *licensed by justices*, or in any hospital, on such days and at such hours as they shall think fit; and if after two separate visits, seven days intervening between them, it shall appear that the patient is detained without sufficient cause, he may be discharged on the order of such visiting commissioners (*z*).

Similar powers are given to two visitors as to houses within their jurisdiction (*a*). Every order for the discharge of a patient under the preceding powers must be signed by the persons exercising them, and are subject to certain other restrictions (*b*).

The powers of discharge do not extend to any person found lunatic by inquisition under an inquiry directed under 8 & 9 Vict. c. 100, s. 95, nor to any lunatic confined under an order of the Home Secretary, or of any Court of Criminal Jurisdiction (*c*).

(*y*) 8 & 9 Vict. c. 100, s. 76.

(*z*) *Ib.* s. 77.

(*a*) *Ib.* s. 78.

(*b*) *Ib.* ss. 79, 80.

(*c*) *Ib.* s. 81. As to the discharge

of pauper lunatics upon the undertaking of a relative or friend, or on convalescence; see 8 & 9 Vict. c. 126, ss. 65, 71; 1 & 2 Vict. c. 14, ss. 2—4.

CHAPTER XIII.

OF THE DISQUALIFICATIONS OF LUNATICS FOR THE
PERFORMANCE OF PUBLIC DUTIES.

THE administration of public affairs, and the performance of duties affecting important rights and interests of the community or of individuals, being the most sacred trusts which can be confided in man, evidently require a larger portion of understanding, judgment, and self-government, than is possessed by the unfortunate persons who are the subject of this work; it would, therefore, at first sight, appear almost superfluous to point out their incapacity for exercising public functions, which imply the possession of greater abilities than are in general necessary for the proper management of private affairs; but as some authorities upon the subject of such disqualifications are to be found in our legal and constitutional writers, it will be proper to notice them.

When a monarch of this country, through mental incapacity, has become incapable of administering the executive power with which he is intrusted, the constitutional method of providing for the temporary interruption of the exercise of the royal authority, is the appointment of a Regent by the two Houses of Parliament (*a*).

On the illness of George the Third being reported to Parliament, a select committee, consisting of twenty-one members, was appointed by each House to examine the physicians who attended him during his illness, touching the state of his health, and to report such examination to the House (*b*). After the examination of the King's physicians, committees were in like

(*a*) In the year 1454, a Regent was appointed on account of the derangement and mental imbecility of Hen. VI. See Hallam's Middle Ages, 2 Vol. 401, 4to ed.; 3 Vol.

282, 8vo ed.; Ling. Hist. of Engl. 3 Vol. 474; see Plowd. 213.

(*b*) Lords' and Commons' Journal, 8th Dec. 1788.

manner appointed to examine and report precedents of such proceedings, as might have been had in the case of the personal exercise of the royal authority, being prevented or interrupted by infancy, sickness, infirmity, or otherwise, with a view to provide a remedy for the same (*c*). When the insanity of George the Third had been established by medical evidence, it was reported by the committees of the two Houses of Parliament, that, for the purpose of providing for the exercise of the royal authority during the continuance of his Majesty's illness, in such manner and to such extent as the circumstances and the urgent concerns of the nation required, it was expedient that His Royal Highness the Prince of Wales, being resident within the realm, should be empowered to exercise and administer the royal authority, according to the laws and constitution of the United Kingdom, in the name and on the behalf of his Majesty, and under the style and title of Regent of the kingdom, and to use, execute, and perform, in the name and on the behalf of his Majesty, all authorities, prerogative acts of government, and administration of the same, which belong to the King of this realm, to use, execute, and perform, according to the laws thereof (*d*). A Regent was afterwards appointed during the incapacity of George the Third (*e*).

Persons deaf and dumb, or blind, or idiots, or madmen, are disqualified for being chosen members of Parliament (*f*), but lunatics in lucid intervals are eligible, for the lunacy may never return; but if it should, and be duly reported to the House, there are precedents for declaring such lunatic's seat vacant (*g*).

(*c*) Lords' Journals, 12th Dec. 1788; and Commons' Journals, 10th Dec. 1788.

(*d*) Lords' Journals, 4th Jan. 1811; Commons' Journals, 2nd Jan. 1811. The precedents of proceedings in cases where the exercise of the royal authority, has been prevented by sickness, &c. are reported in the Lords' Journals, 17th Dec. 1788; Commons' Journals, 12th Dec. 1788.

(*e*) See statutes 51 Geo. 3, c. 1;

52 Geo. 3, cc. 6, 7, 8. Parliamentary Debates, 1788 & 1789, March, 1810; Vol. 18, Cobbett's Parl. Debates; see 1 Wm. 4, c. 2; 7 Wm. 4 & 1 Vict. c. 72; 3 & 4 Vict. c. 52.

(*f*) 1 Whitlock's notes on the King's writ, 461; Comm. Journ. 1623, 1625.

(*g*) Case of Grampound, 1566, D'Ewes' Journal, 126; see Male on Elections, p. 34; 1 Roe, 113, Rogers, 57.

When a member of the House of Commons becomes insane, the practice of Parliament is not to discharge a member from his service, on account of his being afflicted with a curable disease, but the House appears uniformly to have inquired into the nature of the alleged malady, and to have granted or refused a new writ, according as there seemed to be a permanent or temporary incapacity in the member previously returned (*h*).

On the petition of three of the registered freeholders of the county of Wexford, on behalf of themselves and other freeholders setting forth the election of two members to represent the county in Parliament, and that they afterwards took their seats, and that one of such members, in some time after such election and return, became afflicted with a mental malady, and that a commission of lunacy had been issued, under which such member had been found a lunatic, and praying the House would order that a new writ might be issued for the return of a new member in the place of the insane member. It was referred to the committee of privileges to examine the subject-matter of the petition, and to report the same with their observations thereupon to the House (*i*).

The committee reported, that the fact of the member's lunacy having been established by the production of an inquisition of a jury taken upon a commission of lunacy under the Great Seal of Ireland, they had proceeded to inquire into the allegation of the petitioners, that there was not the slightest hope that he would recover, and, having examined the medical attendants, and the keeper of the house in which the member was confined, they were of opinion that the member's malady, though severe and aggravated by its long continuance, could not at present be considered incurable. That the committee in the investigation of the law and practice of Parliament in similar cases, had been unable to discover any sufficient authority for discharging a member from his service in Parliament, on account of his being afflicted with a curable disease. That in cases since the reign of Henry VIII., (*k*) the House appears

(*h*) See Journals of House of Commons, April 2nd, 1811, and Appendix thereto, p. 687.

(*i*) Journals of the House of Commons, 2nd April, 1811, p. 226.

uniformly to have inquired into the nature of the alleged malady; and to have granted or refused a new writ, according as there seemed to be a permanent or temporary incapacity in the number previously returned (*l*).

Idiots and lunatics are incapable of voting for members of Parliament, although they possess the other necessary qualifications, but, if during a lucid interval a voter be capable of declaring his vote, and repeating the oaths which may be required of him, his vote ought not to be rejected (*m*).

Formerly a coadjutor was appointed to assist a bishop, who, through incapacity, was unfit to discharge his episcopal duties (*n*), but provision is now made for the performance of the functions of any bishop or archbishop, who shall be incapable of duly exercising them in person.

Whenever any archbishop of England or Ireland shall have reason to believe, that any bishop of his province is incapable by reason of *mental infirmity*, of duly performing his episcopal functions, such archbishop after notice, may issue a commission to inquire into the state of the mental capacity of such bishop (*o*).

The act also provides for similar proceedings in the case of the like infirmity of any archbishop (*p*).

The commissioners or any two of them are required to make a report (*q*); but if a bishop or archbishop, shall be found a lunatic under a writ *de lunatico inquirendo*, and the inquiry should not be quashed, or the commission superseded, the finding under it is to stand in the place of the report of the commissioners (*r*).

On a report that the bishop or archbishop is incapable by reason of mental incapacity, of duly performing his duties, another bishop of the same province is to be appointed to

(*k*) Brooke's Abr. tit. Parl. s. 7.

(*l*) Journals of the House of Commons, 2nd April, 1811, p. 687.

(*m*) See Heywood's Law of Elections, 259, 2nd ed.; Orme's Digest of Election Laws, 108; see 2 Wm. 4, c. 45, ss. 19, 20, 26, 27; *Bedford* case, 1 Perry & Kn. 130; *Oakhamp-*

ton case, 1 Fras. 162—4; Wordsworth on Elections, 129, 2nd ed.

(*n*) Gibs. Cod. 157.

(*o*) 6 & 7 Vict. c. 62, s. 1.

(*p*) Ib. s. 7.

(*q*) Ib. s. 5.

(*r*) Ib. s. 14.

perform the episcopal functions. A spiritual person is also to be appointed to assist in the administration of the temporalities (*s*). The persons appointed are to have the same legal remedies by action or suit or distress, for enforcing the payment of the revenues of the see, as might have been exercised by the incapable bishop or archbishop—if no commission had issued (*t*).

Provision is made for restoring such archbishop or bishop on his recovery (*u*).

If a beneficed clergyman becomes of unsound mind, and is incapable of performing his parochial duties, his living is not vacated, but the bishop of the diocese will provide for the service of the church by appointing a curate who will be paid out of the profits of the living. If the ecclesiastical duties of any benefice are inadequately performed, the bishop may, after a report of that fact, and in case of the neglect or omission of the incumbent for three months, appoint and license a curate with such stipend as he shall think fit, not exceeding the stipends allowed to curates by the act 1 & 2 Vict. c. 106, in the case of non-resident incumbents (*v*).

In case of a stipend being assigned by the bishop according to the provisions of the act 1 & 2 Vict. c. 106, to the curate of any benefice, the incumbent whereof shall have been duly found a lunatic, or a person of unsound mind—the committee of the estate of any such lunatic, or person of unsound mind, shall pay such stipend to such curate out of the profits of the benefice which shall come to his hands (*w*).

The creditors of a lunatic incumbent may obtain a sequestration against his living for payment of their debts (*x*).

If the defaulter in payment of tithe composition in Ireland be a lunatic, and his committee or receiver be in the actual

(*s*) 6 & 7 Vict. c. 62, s. 11.

(*t*) *Ib.* s. 12.

(*u*) *Ib.* s. 15.

(*v*) 1 & 2 Vict. c. 106, s. 77; see s. 86, for scale of stipends where the incumbent is non-resident; see 1 Burn's Eccl. Law, tit. Coadjutor,

Gibs. Cod. 901, 902; *Pace's case*, Dyer 303 (a) n.

(*w*) 1 & 2 Vict. c. 106, s. 79.

(*x*) 14 Ves. 182, as to the mode of obtaining sequestration, see Shelford on Tithes, 24—28, 3rd ed.; Burn's Eccl. Law, tit. Sequestration.

receipt of the rents of the lands in respect of which the arrears shall be claimed—the notice shall be served upon the receiver or committee, or at his usual, or last place of business, or abode, or on the person ordered by the Court (*y*).

A *non compos* ought not to sit as a Judge; it is nevertheless said, that, should such a case occur, the fines, judgments, and other records taken before him would be good; but it is otherwise of matters in *fait* which might be avoided by a person of nonsane memory (*z*).

The Lord Chancellor may grant annuities to such of the Masters in Chancery as are disabled by any permanent infirmity from the due execution of their offices, and who by reason of such infirmity may be incompetent duly to resign their office (*a*).

Justices may discharge a parish apprentice, who has become *non compos*. Where a boy, who had been put out as a parish apprentice, after three years' service, plainly appeared to be an idiot, incapable of learning his trade, the Court of King's Bench confirmed an order of sessions, discharging his master of him. For it would be hard upon the master to keep one who could do him no service, and the parish, in the meantime, go free (*b*).

An idiot, lunatic, or person otherwise *non compos mentis*, cannot do any act, as an agent or attorney, binding upon the principal; for they have not any legal discretion or understanding to bestow upon the affairs of others, any more than upon their own (*c*).

If an attorney to whom a clerk has been articled become insane during the clerkship, the Court will discharge such clerk from his articles without any assignment, and allow him to enter into fresh articles for the remainder of his term of service; but it will not allow the period during which the

(*y*) 4 & 5 Vict. c. 5, s. 3; see 1 & 2 Vict. c. 109; 3 & 4 Vict. c. 13.

(*z*) Bryd. 65, 85; Brooke's Abr. 258, Pl. 7; Mirror of Justices, chap. 2, s. 2.

(*a*) 3 & 4 Vict. c. 34; see 46

Geo. 3, c. 128.

(*b*) Anon. 1 Skinn. 114; see *Rex v. Charles*, Burr. S. C. 706.

(*c*) Britt. c. 126; Story's Law of Agency, 8.

Master has been insane and before the new articles are entered into, to be reckoned as part of his requisite period of service (*d*).

And as a *non compos* is incapable of distinguishing the rights of parties, or of making a proper award, he cannot be an arbitrator (*e*).

A *non compos* cannot be guardian of another person, for one who cannot govern himself, will be unable to manage another or his concerns (*f*).

In receiving evidence, it is necessary to take into consideration the capacity of the witness for knowledge, and his opportunities of acquiring it, as well as his power to understand the nature and obligation of an oath (*g*). It is obvious, that the testimony of those persons who labour under diseases seated in the mind, are liable to great, and often insurmountable suspicion. However acute, in some cases, the perceptions and memory of such persons may be, the mistaken inferences which they draw, and their inability to communicate even their perceptions without this admixture, renders all attempts to extract truth from their declarations utterly unavailing. Insane persons, idiots, and lunatics under the influence of their malady, are utterly incapable of giving evidence (*h*). But lunatics and other persons, though subject to temporary fits of insanity, may be witnesses in their lucid intervals, if they have sufficiently recovered their understandings (*i*). And a person born deaf and dumb, is not on that account incompetent, but, if he has sufficient understanding, may give evidence by signs, with the assistance of an interpreter (*k*); or if they are able to write, their testimony will be taken in writing as the more certain mode (*l*). A witness

(*d*) *Ex parte Turner*, Law J. 1841, Q. B. 356; see *Ex parte Darbell*, 6 Dowl. P. C. 505.

(*e*) Bryd. 58.

(*f*) Co. Litt. 88 (b); *Ex parte Brydges*, H. T. 1791; 2 Fonbl. Eq. 249, n.; see *ante*, p. 577.

(*g*) Grotius de Jure Belliac Pacis, B. 2, c. 13, s. 2; Swinb. on Wills, P. 4, s. 24, 9.

(*h*) Co. Litt. 6 (b). Com. Dig. Testmoigne A. (1).

(*i*) Com. Dig. Ibid.; Bac. Abr. Ev. (A.); 2 Hale, P. C. 278; Leach, Cr. L. 507.

(*k*) *Ruston's case*, Leach, Cr. L. 455; see 1 Phill. on Ev. p. 4, 9th ed.; Peake on Ev. 127.

(*l*) *Morrison v. Lennard*, 3 Car. & P. 127.

who has attested an instrument, and afterwards become insane, will be considered as dead during his incapacity, and proof of his handwriting to the attestation will be admissible (*m*).

A *habeas corpus ad testificandum* may be obtained to bring up the body of a confined lunatic to give evidence in a cause, upon an affidavit shewing that he is not a dangerous lunatic, and that he is in a fit state to be brought up (*n*).

It does not appear to be settled whether or not the examination of a pauper respecting the place of his settlement, taken when he was *sane* by two justices, can be given in evidence after he has become *insane* to prove his place of settlement. Thus, in a case where a pauper, in 1779, was taken before two justices, when his examination as to the place of his settlement was taken upon oath before such justices, and signed by him, by which it appeared that he had gained a settlement by hiring and service, but was not removed until five years afterwards, when he had become insane and continued so to the time of his removal and of hearing of the appeal—The justices received the examination as evidence, subject to the opinion of the Court of King's Bench as to its admissibility; and the Judges of that Court were divided in opinion (*o*).

The depositions taken in a cause of such of the witnesses as are unable to attend from bad health, may be read on the trial of an issue at law; but, in order to save the expense of proving the bill, answer, and other proceedings, it is necessary to obtain the previous order of the Court of Chancery (*p*). It is a common practice of that Court, in directing the trial of an issue, to make an order that the parties shall be at liberty to

(*m*) *Bernett v. Taylor*, 9 Ves. 381; see 3 T. R. 721, *ante*, p. 376; *Currie v. Child*, 3 Camp. 283.

(*n*) *Fennell v. Tait*, 1 Cr., M. & R. 584; 5 Tyr. 218; 3 Dowl. 161; see *ante*, p. 533.

(*o*) *Rex v. Eriswell*, 3 Term Rep. 707; S. C. 2 Bott, 649, pl. 727; see *Rex v. Ferry-Frystone*, 2 East, 54; *Rex v. Warminster*, 3 B. & Ald. 121;

1 & 2 Vict. c. 14, s. 2; 3 & 4 Vict. c. 54, s. 2; 8 & 9 Vict. c. 126, s. 58.

(*p*) *Palmer v. Lord Aylesbury*, 15 Ves. 176; *Gordon v. Gordon*, 1 Swanst. 170; S. C. 1 Wils. C. C. 155; *Corbett v. Corbett*, 1 Ves. & Bea. 335; *Bellingham v. Pearson*, Id. 349, n (a); see Seton's Forms of Decrees in Eq. 347.

read, on the trial, office copies of the depositions taken in the cause, of such of the witnesses examined therein as, upon the trial, should, to the satisfaction to the Judge, be proved to be dead (*q*).

In one case, where an issue was directed to try the sanity of a party who had executed deeds, it was ordered, that the parties should be at liberty to read the depositions of any or either of the witnesses examined in the cause at the trial of the issues directed, who should be proved, to the satisfaction of the Court, to be dead at the time of such trial, or in such a state of health as not to be capable of attending the trial, or who, having been of sound mind at the time of their examination in the cause, should, at the time of the trial, be in a state of mental imbecility, or be incapable of giving testimony (*r*). If a witness, produced before commissioners under a commission appointed by the Court of Chancery, is not of competent understanding, the adverse party may except against him, and the commissioners ought not to examine him. But if they who have the carriage of the commission insist upon the examination of him, the other commissioners must certify the matter to the Court, and affidavit of the irregularity must be made (*s*).

If a witness is actually insane at the time of the trial of an indictment for a misdemeanor, his deposition taken before the committing magistrate is receivable in evidence, the same as if the witness were dead, although the insanity of the witness may be only temporary: but if it appear that the witness is not insane, but has been suffering from delirium and depression of spirits in consequence of a blow on the head, and that his intellects are affected by the injuries which he has received, and it is the opinion of his physicians that he will recover, then such deposition is not receivable in evidence (*t*).

The ground of excluding the evidence of insane persons in

(*q*) *Tatham v. Wright*, Reg. Lib. B. 1828, fol. 2422; *Jones v. Roberts*, Reg. Lib. A. 1129, pl. 2849; *Andrews v. Palmer*, 1 Ves. & B. 21.
(*r*) *Murley v. Templeman*, Reg.

Lib. B. 1825, fol. 1310; *Jones v. Jones*, 1 Cox, 184.

(*s*) Wy. Pr. Reg. 419.

(*t*) *Reg. v. Marshall*, 1 Car. & M. 147.

Courts of Justice, requires little or no illustration, for it is obvious that they are altogether unfit to communicate such information as can be relied upon, or will afford a motive to assent in any case. And much caution is required in admitting persons who are sometimes insane to give testimony in a Court of Justice, even during their lucid intervals. Where, indeed, the intermission of the disease has been long and the fact concerning which the evidence is required is of recent occurrence, and no access of the disease has followed, evidence of the facts to which such a witness deposes ought to be received, more especially if other witnesses to the same point cannot be obtained. But such evidence is liable to great suspicion, and will not, perhaps, be entitled to receive full credit, except in conjunction with, and as corroborative of, other proof. With regard to those lesser degrees of mental weakness and dis-temper which may considerably impair the judgment, without amounting to a state of fatuity or madness, it is obvious that no precise rules can be laid down. These circumstances, so far as they are known to a Court or jury, will necessarily affect their opinion of the testimony, and diminish the credit of the witness more or less according to the circumstances of the case; but it may be held generally, that if a witness appears to be so far of a sound mind as to comprehend the nature of the oath administered to him, and gives intelligible answers to the questions which are put, it is fit that his testimony should go to the consideration of the jury, or those who are trying the facts, unless a special proof is immediately offered of his actual insanity. To attempt any thing like an enumeration of the special circumstances which may affect the credit of testimony in this, as in other general cases, is plainly impossible.

APPENDIX.

STATUTES RELATING TO PROCEEDINGS IN LUNACY, AND TO THE CONFINEMENT AND TREATMENT OF LUNATICS IN ENGLAND AND WALES.

De Prerogativâ Regis 17 Edw. 2, st. 1.—A. D. 1324.

CAP. IX.

Rex habet (habebit) custodiam terrarum fatuorum naturalium, capiendo exitus earundem sine vasto et destructione et inveniet eis necessaria sua de cujuscumque feodo terre ille fuerint; et post mortem eorum reddat eas (eam) rectis hæredibus ita quod nullatenus per eosdem fatuos alienentur vel (nec quod) eorum hæredes exheredentur.

THE King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots he shall render them to the right heirs; so that by such idiots no alienation shall be made, nor shall their heirs be disinherited (a). 17 Edw. 2, st. 1.

CAP. X.

Item habet providere (Rex providebit) quando aliquis qui prius habuit (habuerit) memoriam et intellectum, non fuerit compos mentis suæ, sicut quidam sunt per lucida intervalla quod terre et tenementa eorundem (ejusdem) salvo custodiantur sine vasto et destructione, et quod ipse et familia sua de exitibus eorundem vivant et sustineantur competenter; et residuum ultra sustentationem eorundem rationabilem custodiatur ad opus ipsorum liberandum eis (eisdem) quando memoriam recuperaverint. Ita quod predictæ terre et tenementa infra prædictum tempus non

(a) See ante, p. 10.

17 E.lw. 2, st. 1.

(nullatenus) alienentur nec Rex de exitibus aliquid percipiat ad opus suum; et si obierit in tali statu tunc illud residuum distribuatur pro animâ ejusdem per consilium ordinariorum (ordinarii).

ALSO, the King shall provide when any (that beforetime hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the issues of the same; and the residue beyond their reasonable sustentation, shall be kept to their use, to be delivered unto them when they recover their right mind; so that such lands and tenements shall in no wise within the time aforesaid, be aliened; nor shall the King take anything to his own use. And if the party die in such estate, then the residue shall be distributed for his soul by the advice of the ordinary (b).



TRAVERSE OF AN INQUISITION OF LUNACY.

2 & 3 Edw. 6.—*Anno Domini*, 1548.

CAP. VIII.—SECT. 6.

2 & 3 Edw. 6,
c. 3, s. 6.

If any person be, or shall be untruly, founden lunatic. idiot, or dead: Be it enacted by the authority aforesaid, That every person and persons grieved, or to be grieved by any such office or inquisition, shall and may have his or their traverse to the same immediately or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse, upon untrue inquisitions or offices founden; any law, usage, or custom to the contrary in anywise notwithstanding (c).

IRISH STATUTE.—15 *Charles* 1.—*Anno Domini*, 1639.

CAP. IV.—SECT. 3.

15 Car. 1, c. 4,
s. 3.

AND also where one person or more is or shall be found heir to the King's tenant by office or inquisition, where any other person is or shall be heir, or if one person or more be or shall be found by office or inquisition in one county, and another person or persons is or shall be found heir to the same person in

(b) See *ante*, p. 11—14.

(c) See *ante*, p. 144.

another county, or if any person be or shall be untruly found lunatic, idiot, or dead: Be it enacted, by the authority aforesaid, that every person and persons grieved or to be grieved by any such office or inquisition, shall and may have his or their traverse to the same immediately or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices found; any law, usage, or custom to the contrary in anywise notwithstanding.

15 Car. 1, c. 4,
s. 3.

6th George 4, c. 53.

An Act for limiting the Time within which Inquisitions of Lunacy, Idiocy, and Non compos mentis may be traversed, and for making other Regulations in the Proceedings pending a Traverse (d).
[22d June, 1825.]

WHEREAS by an act passed in the second and third years of the reign of King Edward the Sixth, it was enacted, That if any person should be untruly founden lunatic, idiot, or dead, every person and persons grieved by any such office or inquisition, should and might have his or their traverse to the same immediately, or after, at his or their pleasure, and proceed to trial therein, and have like remedy and advantage as in other cases of traverse upon untrue inquisitions or offices founden: And whereas great inconvenience hath arisen from there being no time limited within which inquisitions or offices finding persons lunatic, idiot, or of unsound mind, must be traversed; and it is expedient that some time should be limited for that purpose: And whereas the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, or of unsound mind, have been usually intrusted by virtue of the King's sign manual, to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of the United Kingdom and of Ireland respectively: It is enacted, That where any inquisition has, before the passing of this act, been returned into the High Court of Chancery, by which any person hath been found lunatic, idiot, or of unsound mind, it shall be lawful for any person or persons desiring to traverse such inquisition, or for any person or persons desiring to oppose such traverse, to present a petition to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of the United Kingdom and of Ireland respectively, or other the person or persons intrusted as aforesaid, by virtue of the King's sign manual, before the end of Michaelmas Term next after the passing of this act, praying that such traverse may be proceeded in and brought to trial; and

Petitions to traverse inquisitions to be presented within a limited time.

(d) See *ante*, pp. 144, 145.

6 Geo. 4, c. 53.

Order to be
made thereon.

Security for
traverse.

Persons not pe-
titioning within
limited time
barred ;

unless Lord
Chancellor see
cause to the
contrary.

where any person or persons shall be desirous of traversing any such inquisition as aforesaid, which shall be returned into the said Court of Chancery after the passing of this act, a petition for that purpose shall be presented to the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, within three calendar months, to be computed from the day of the return of such inquisition ; and the said Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, is or are hereby directed and required to hear and determine such petition ; and the said Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid respectively, shall, in every order to be made upon any such petition, as aforesaid, limit a time, not exceeding six calendar months from the date of such order, within which the person or persons desiring to traverse as aforesaid, and all other proper parties, are to proceed to trial of the traverse to which such petition shall relate ; and it shall also be lawful for the said Lord Chancellor, Lord Keeper, or Lords Commissioners, intrusted as aforesaid, in the case of every such traverse as aforesaid, upon the petition of any such person or persons as aforesaid, to make an order that the person or persons desiring to traverse as aforesaid, not being the party who has upon such inquisition been found lunatic, idiot, or of unsound mind, shall, within three weeks after the date of such order, give sufficient security to one of the Masters in ordinary of the said Court of Chancery, and to the satisfaction of the same Master, for all proper parties proceeding to the trial of such traverse as aforesaid, within the time to be for that purpose limited as aforesaid.

II. That every person having or who shall hereafter have right to traverse any such inquisition as aforesaid, who shall not present his or her petition for that purpose to the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, within the time hereinbefore limited, and applicable to his or her case, or who shall refuse or neglect to give such security as aforesaid, or who shall not proceed to the trial of such traverse within such time as shall be in that behalf limited or directed as aforesaid, and the heirs, executors, and administrators of every such person, and all others claiming or to claim by, through, or under him or her, shall be and are hereby absolutely barred of such right of traverse, unless the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, shall under the special circumstances of any particular case, think fit, upon a petition being presented to him or them for that purpose, to allow such traverse to be had or tried after the time by this act limited ; in all which special cases it shall be lawful for the said Lord Chancellor, Lord Keeper, or Lords

Commissioners, or other the person or persons intrusted as aforesaid, to make such orders as to him or them shall seem just. 6 Geo. 4, c. 53.

III. Provided always, That it shall be lawful for the Lord Chancellor, Lord Keeper, and Lords Commissioners, or other the person or persons intrusted as aforesaid, if he or they shall be dissatisfied with any verdict to be returned upon any such traverse as aforesaid, to order one or more new trial or trials thereon, as to him or them shall seem meet, and as is usual in cases of issues directed by the Court of Chancery; any thing hereinbefore contained to the contrary in anywise notwithstanding (e). Lord Chancellor may direct new trials.

IV. Provided also, That it shall be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners, or other the person or persons intrusted as aforesaid, from time to time after the return of any such inquisition as aforesaid, and notwithstanding any petition or order which may be depending relating to a traverse of such inquisition, to make such orders relative to the custody and commitment of the person or persons, and the commitment, management and application of the estates and effects of any person or persons who shall or may have been found lunatic, idiot, or of unsound mind, by any such inquisition or inquisitions as he or they shall think necessary or proper; and all acts, matters, and things which shall have been done by any person or persons appointed committee or committees of the persons or estates of such persons found or to be found lunatic, idiot, or of unsound mind as aforesaid, or by any other person or persons, shall be and are hereby declared to be as valid and effectual; and such committees and other persons respectively, their heirs, executors, and administrators, are hereby indemnified in respect of such acts, matters, and things, from and against all actions, suits, and proceedings, damages, costs, charges, and expenses, to be brought, commenced, had or recovered by the person or persons so found lunatic, idiot, or of unsound mind, his, her, or their heirs, executors, or administrators, or any other person or persons whomsoever, as fully and effectually as if such inquisition had not been traversable, but no further or otherwise (f). Chancellor may make orders for management of persons and estate of lunatics.

(e) See *ante*, 155.

(f) See *ante*, p. 160.

TREATMENT OF LUNATICS, SO FOUND BY INQUISITION.

3 & 4 Wm. 4, c. 36.

An Act to diminish the Inconvenience and Expense of Commissions in the Nature of Writs De lunatico inquirendo; and to provide for the better Care and Treatment of Idiots, Lunatics, and Persons of unsound Mind, found such by Inquisition.

[24th July, 1833.]

3 & 4 Wm. 4,
c. 36.

The Lord Chancellor, or Lord Keeper, may cause commissions in the nature of writs de lunatico inquirendo to be addressed to any one or more persons, who shall have sufficient power to make inquisition therein.

WHEREAS great inconvenience and expense have been experienced from the practice of directing or addressing commissions in the nature of writs *de lunatico inquirendo* to three or more persons therein named as commissioners: And whereas doubts have arisen whether such commissions can be directed or addressed to one such commissioner only: Be it enacted and declared, That it shall and may be lawful, to and for the Lord Chancellor, or the Lord Keeper or Commissioners of the Great Seal of Great Britain, or other the person or persons for the time being intrusted by virtue of the King's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind (in case he or they shall deem it advisable), to cause any commission in the nature of a writ *de lunatico inquirendo* to be directed or addressed to any one or more person or persons, who shall make inquisition thereon, and return the same into the High Court of Chancery, and who for that purpose shall have the same power to issue precepts to the sheriff to summon a jury, and to compel the attendance of witnesses, and the production or attendance of the alleged lunatic, idiot, or person of unsound mind, and all other the powers hitherto possessed by the three or more commissioners in such commissions named; and such inquisition shall be good and valid to all intents and purposes, as if the said commission in the nature of a writ *de lunatico inquirendo* had been directed or addressed to, and the said inquisition returned by three or more commissioners, as heretofore (a).

The Lord Chancellor may appoint visitors to superintend and report to him upon the care and treatment of idiots, &c.

II. And whereas it is expedient, for the better care and treatment of idiots, lunatics, and persons of unsound mind, found such by inquisition, that proper and fit persons should be appointed to superintend, and from time to time report to the Lord Chancellor, or other the person or persons intrusted as

aforesaid, the care, and treatment, and state of every such idiot, lunatic, and person of unsound mind; be it further enacted, That it shall and may be lawful for the Lord Chancellor, or other the person or persons intrusted as aforesaid, by an instrument under his hand and seal, or their hands and seals, to appoint three persons, two of whom shall be physicians, and one a barrister of not less than five years standing, to be visitors, during pleasure, for superintending, inspecting, and reporting upon, under the order and direction of the Lord Chancellor, or other the person or persons intrusted as aforesaid, the care and treatment of all persons found idiot, lunatic, or of unsound mind, by inquisition, and to make all such orders and regulations as to the duties of such visitors as the Lord Chancellor, or other the person or persons intrusted as aforesaid, shall from time to time think fit, and to allow such visitors such salaries, not to exceed five hundred pounds per annum to each of the medical visitors, and three hundred pounds per annum to the other visitor, for their trouble, and also such allowances for travelling expenses as such Lord Chancellor or other the person or persons intrusted as aforesaid shall think reasonable (*b*).

3 & 4 Wm. 4,
c. 36.

III. That each of such persons so found idiot, lunatic, or of unsound mind as aforesaid shall be visited at the least once in each year, by one of such medical visitors, and oftener if the same shall be deemed expedient by the Lord Chancellor, or other the person or persons intrusted as aforesaid.

Persons found
idiots, &c., to
be visited at
least once in
each year.

IV. That within a fit and convenient time after each such visitation such visitors shall respectively make a report in writing to the Lord Chancellor, or other the person or persons intrusted as aforesaid, of the state of mind and bodily health, and of the general condition, and also of the care and treatment of each such person so found idiot, lunatic, or of unsound mind, who shall have been visited by him as aforesaid; which reports shall be duly filed and kept secret in the office of such visitors, and shall be open to the inspection of no person whatsoever, save and except the said visitors, their secretary, and the Lord Chancellor, or other the person or persons intrusted as aforesaid, or such other person or persons as the Lord Chancellor, or other person or persons intrusted as aforesaid, shall specially appoint: Provided always, that all such reports, so far as the same relate to any particular patient, shall be cancelled and destroyed on the decease of each such patient, and shall also be cancelled and destroyed on the supersedeas of his or her commission, unless the Lord Chancellor, or other the person or persons intrusted as aforesaid, shall deem it fit and expedient that the same shall not be cancelled or destroyed until his or her death.

Visitors to re-
port to the Lord
Chancellor, &c.,
on care and
treatment of
idiots, &c.

V. That as often as any of the visitors to be appointed as

In case of death,
&c., of visitors,

(*b*) The Masters in Lunacy are to be *ex officio* visitors of Lunatics under the act 5 & 6 Vict. c. 84, s. 4, see *post*, p. 637.

3 & 4 Wm 4,
c. 36.

the Lord
Chancellor may
appoint others.

Persons inte-
rested in houses
licensed for the
reception of in-
sane persons not
to act as visitors.

A secretary to
such visitors
may be ap-
pointed.

A fund for pay-
ment of salaries
and expenses to
be raised by a
per-centage on
the income of
the idiots, &c.

Committees,
&c., to pay such
per centage into
the bank. upon
receiving notice.

aforesaid shall die or be removed, or refuse to act, or to become unable, by illness or otherwise, to act, it shall and may be lawful for the Lord Chancellor, or other the person or persons intrusted as aforesaid, by an instrument under his hand and seal, or their hands and seals, to appoint a visitor in the room of every visitor who shall die or be removed, or refuse or become unable to act.

VI. That no person shall be appointed visitor as aforesaid who shall be, or shall have been within the two years then next preceding, directly or indirectly interested in the keeping any house licensed for the reception of insane persons; and if any person shall after his appointment become so interested, and continue to act as such visitor, his appointment as visitor shall thenceforth become null and void, and it shall not be lawful for him to act as such visitor.

VII. That the Lord Chancellor, or other the person or persons intrusted as aforesaid, is and are hereby empowered, by an instrument under his hand and seal, or their hands and seals, to appoint, during pleasure, a fit person to be secretary to such visitors, and for the purposes of this act, and to allow such person such salary for his trouble, not exceeding three hundred pounds *per annum*, and also to allow such further sum or sums of money, not exceeding three hundred pounds *per annum*, for providing and maintaining suitable offices for the said visitors and secretary, and for the general expenses of carrying into execution the purposes of this act, as such Lord Chancellor, or other the person or persons intrusted as aforesaid, shall think reasonable.

VIII. That in order to raise a fund for the payment of the said salaries and expenses, and for the other incidental expenses of this act, it shall be lawful for the Lord Chancellor, or other the person or persons intrusted as aforesaid, to raise such fund by a per-centage on the clear annual incomes of the persons found idiots, lunatics, or of unsound mind, by inquisition as aforesaid, such per-centage not to exceed one and a half pounds *per cent.* on such clear annual incomes, and to order the same, by general order, to be paid by the committees or receivers, or other the person or persons for the time being in receipt of the income of the respective estates of the said idiots, lunatics, and persons of unsound mind, into the Bank of England, in the name and with the privity of the Accountant-General of the Court of Chancery, to an account to be opened and intituled, "The Account of the Board of Visitors for the better Care and Treatment of Lunatics."

IX. That the said committees and receivers, or other the person or persons aforesaid, shall respectively pay out of the funds in their hands the said per-centage so ordered to be paid as aforesaid, on the sums certified by the Masters of the Court of Chancery to be the amounts of the clear annual incomes as hereinafter mentioned, into the Bank of England, in the name of the Accountant-General, to the said account, so to be opened

and entitled as aforesaid, within one calendar month after receiving a notice in writing from the said secretary to the said visitors, setting forth the amount of the sums so certified as the sums to be paid by such committees and receivers, or other person or persons as aforesaid, and shall be allowed the same in passing their accounts.

3 & 4 Wm. 4,
c. 36.

X. And for the better estimating the amounts of the said clear annual incomes, and collecting the said per-centage thereon ; be it further enacted, That the Masters of the said Court of Chancery shall, within two calendar months from the passing of this act, in all matters of lunacy referred to them, wherein a committee or committees shall have been then appointed, and within two calendar months after the appointment of committees, or within twelve calendar months after the date of the inquisition in all other cases, respectively ascertain and certify to the Lord Chancellor, or other the person or persons intrusted as aforesaid, the respective amounts of the clear annual incomes of the persons so found idiots, lunatics, or of unsound mind as aforesaid ; and in case any alteration shall afterwards take place, the said several Masters shall respectively certify the same to the Lord Chancellor, or other the person or persons intrusted as aforesaid, within two calendar months after such alteration shall have been made known to them ; and for the purpose of enabling the said Masters to ascertain and certify the amounts of such clear annual incomes, it shall and may be lawful for the said Masters to summon the committees and receivers, or other the person or persons for the time being in receipt of the income of the respective estates of the said idiots, lunatics, and persons of unsound mind, to attend them, to give them all the information in their power, and also to produce all books, papers, accounts and documents in their possession or power, relating to the incomes or estates of such idiots, lunatics, and persons of unsound mind (*c*).

Masters of the
Court of Chan-
cery to certify
the amount of
income of idiots,
&c.

XI. That no sum of money required for the purposes of this act shall be paid by the said Accountant-General out of the said fund so paid into the Bank of England as aforesaid, except upon checks or drafts payable to the bearer, and signed by the Lord Chancellor, or other person or persons intrusted as aforesaid ; and that no fee shall be charged or taken upon, for, or in respect of such payments, or any of them.

Payments out of
the fund to be
by checks sign-
ed by the Lord
Chancellor.

(*c*) The Masters in Lunacy are to certify the amount of the income of lunatics, and the sums payable for per centage thereon, and the names of the committees. The sums certified to be payable for per centage are to be paid into the Bank to " the account of the Board of Visitors for the better care and treatment of lunatics." The Accountant-General is to pay the per centage to the above account out of the dividend of any fund in his name in trust in the matters of lunatics notwithstanding any order for other payment. The dividends in the residue of such funds is to be applied as if this order had not been made. General order, 8th July, 1844, 2 Sanders' orders, 968—971 ; Reg. Lib. B. 1843, fol. 1305. Several orders had been previously made on this subject ; see Beavan's *Ordines Cancellariæ*, pp. 37—40.

3 & 4 Wm. 4,
c. 36.

Accounts to be
audited yearly,
and filed.

XII. That the account of monies received and paid under and by virtue of this act, shall once in every year be made out by the said Secretary, and audited and signed by such one of the said Masters of the said Court of Chancery as the Lord Chancellor, or other the person or persons intrusted as aforesaid, shall appoint for that purpose, and shall afterwards be filed in the office of the Secretary of lunatics; and that no fee shall be charged or taken upon, for, or in respect of such account being so audited or filed.

Order of Court under 3 & 4 Wm. 4, c. 36 (j).

Friday, 21st February, 1834.

Orders in the
matter of the
lunatics' visitors
by whom to be
entered without
fees.

It is hereby ordered and directed by the Lord High Chancellor, by and with the consent and concurrence of the Master of the Rolls and of the Vice Chancellor, that all orders to be made in the matter of the visitors for the better care and treatment of lunatics, under the provisions of the act 3 & 4 Wm. 4, c. 36, and all office copies thereof, and all certificates, reports, and other necessary acts and proceedings to carry the said act into effect, or the powers relating thereto, (other than the private reports to be made by the visitors to the Lord Chancellor, according to the provisions of the said act), shall be drawn up, entered, made, done, and performed in the Registrar's Office, in the office of the Master of Reports and Entries, and in the several offices of the Masters in Ordinary in the High Court of Chancery, without any fees being taken in respect thereof; and further, that all receipts for money paid into the Bank of England in the name of the Accountant-General, and to the credit of the Board of Visitors, for the better care and treatment of lunatics, shall be filed at the office of the Master of Reports and Entries, and office copies thereof made, without any fees being taken thereon; and further, that no fees whatever shall, in respect of any proceeding under the said act, be payable to the said visitors, or any of them, or to the secretary of the said visitors."

BROUGHAM, C.

JOHN LEACH, M. R.

LANCELOT SHADWELL, V. C.

(j) Beav. Ord. Cancell. pp. 71, 72, Reg. lib. 1833, B. fol. 627.

LUNATICS' VISITORS' INSTRUCTIONS TO
SOLICITORS AND COMMITTEES.

Under stat. 3 & 4 Wm. 4, c. 36.

Letter addressed by the Secretary to the Solicitors under commissions, on the return of the inquisition, finding the party a lunatic.

LUNATICS' VISITORS' OFFICE,
45, Lincoln's Inn Fields, London.

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I am directed by the Visitors of Lunatics to beg to be informed by you, as solicitor in the matter of M , a lunatic, what is the present residence of M , if it be in a town, stating the name of the street, and at whose house; if it be not in a town, what is the nearest town, and the distance of the residence from it, and the road upon or near to which the residence lies, that the Visitors may be enabled to execute their duties pursuant to the provisions of the act 3 & 4 Wm. 4, c. 36.

I am also to request that you will inform the Visitors what is the name and residence of the person having the care of M and of the medical attendant for the time being; and in case (prior to the appointment of committees) any change shall at any time be made in the residence of M or if his death should occur, that immediate notice thereof may be sent to this office.

(Signed) _____
Secretary.

Instructions sent by the Visitors of Lunatics to Committees of the person of each Lunatic on their appointment.

The Visitors of Lunatics, under the act of 3 & 4 Wm. 4, c. 36, have directed me to request that you will, from time to time, as occasion shall require, transmit to them the communications specified on the other side, with respect to M , a lunatic, in order to enable them to execute their duties, pursuant to the provisions of the act, and the orders and directions of the Lord Chancellor relative thereto.

(Signed) _____
Secretary.

To the
Committee or Committees of the }
Person of M

3 & 4 Wm. 4,
c. 36.

Information to be sent to the Visitors of Lunatics, *immediately*, of—

The Residence of the Lunatic.

If it be in a town, stating the street, number, and at whose house; if it be not in a town, stating what is the nearest town, the distance of the residence from it, and upon or near what road it is.

The Committees.

The present addresses of the committees of the person and of the estate.

Medical Attendant.

The name and address of the medical attendant.

Reports to be furnished as to the Lunatic's state.

A report to be sent *immediately* by the committees of the person, with the concurrence of the medical attendant (if an habitual one), furnishing information on the following points:—

What is the present state of the mental and bodily health of the lunatic?

What is the mode of treatment?

The like reports to be sent afterwards, in the months of January and July in each year, stating whether any change has occurred, during the half-year, in the mental or bodily state of the lunatic;

And if any important change shall occur in the health or condition of the lunatic, in the interval between such half-yearly reports, a special report thereof to be sent immediately.

Change of residence of Lunatic.

Immediate notice to be sent of any change of residence, whether for a short or long period.

Changes of Committees or their Addresses.

Notice of any such changes to be immediately sent.

Decease of Lunatic.

Immediate notice of this event, when it shall occur, to be sent, specifying the day of the death, with a statement from the medical attendant of the cause of the death, and the most satisfactory information that can be furnished on the subject.

Notice of the Secretary to Visitors of Lunatics to the Committees of Lunatics' Estates to pay the per centage under the Act, 3 & 4 Wm. 4, c. 36.

3 & 4 Wm. 4,
c. 36.

LUNATICS' VISITORS' OFFICE,
45, Lincoln's Inn Fields, London.

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A certificate having in pursuance of the act of the 3 & 4 Wm. 4, c. 36, been duly made that the amount of the clear annual income of a lunatic is £ and the Lord Chancellor having in pursuance of the said act made an order that you do pay the sum of £ being the per centage of *1l. per cent.* on the said clear annual income into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, to an account entitled, "The Account of the Board of Visitors for the better care and treatment of Lunatics," I do hereby, pursuant to the said act, give you notice to pay the said per centage on the said sum of £ (viz.) the sum of £ into the Bank of England in the name of the said Accountant-General to the said account, within one calendar month after receiving this notice.

I have further to inform you that the said per centage is due in respect of the year commencing 3rd August 184 and ending 3rd August 184

(Signed) _____

Secretary.

To
The Committees or Receivers or other
the Person or Persons in receipt of the
Income of the Estate of
a Lunatic.

N. B.—All communications sent through the General Post to this office, are to be addressed thus:—"The Visitors of Lunatics, 45, Lincoln's Inn Fields, London."

NOTE.—*In order to make the payment*, apply first at the A. to C. Division of the Accountant-General's Office, Chancery Lane, for the directions paper, and take it to the Bank with the money, and pay the money in the hall there; then obtain the receipt for it at the Chancery Office in the Bank, and take the receipt to one of the cashiers in the hall to be signed; when signed, immediately leave it at the Accountant-General's Office, Chancery Lane. In about three weeks afterwards apply there for an office copy of the receipt, which will be furnished without fee.

If it be wished that this notice should in future years be sent to the care of any person in London (on your behalf) or otherwise than it is now addressed, if such other address be left at this office, the future notices will be sent as requested.

PRACTICE IN LUNACY.

5 & 6 Vict. c. 84.

An Act to alter and amend the Practice and Course of Proceeding under Commissions in the Nature of Writs De lunatico inquirendo.
[5th August, 1842.]

5 & 6 Vict. c. 84.

Power to Lord
Chancellor to
appoint two
commissioners.

WHEREAS it is expedient to alter and amend the practice and the course of proceeding under commissions in the nature of writs *de lunatico inquirendo*; be it therefore enacted, that it shall be lawful for the Lord Chancellor to appoint two fit and proper persons, being respectively serjeants or barristers at law of not less than ten years standing at the bar, to be called "The Commissioners in Lunacy," (a) and that in future all commissioners in the nature of writs *de lunatico inquirendo* shall be directed or addressed to such commissioners, or one of them; and that such commissioners shall hold their offices during good behaviour, and shall, jointly and severally, have, perform and execute all the powers, duties, and authorities now had, performed, and executed by commissioners named in commissions in the nature of writs *de lunatico inquirendo*.

Oath of com-
missioners.

II. That every commissioner to be appointed by virtue of this act shall, before he shall be capable of acting in the execution of any of the powers and authorities given by this act, take the following oath; (that is to say,)

' I do swear, that I will faithfully, impartially, and
' honestly, according to the best of my skill and knowledge,
' execute the several powers and trusts reposed in me as one of
' the Commissioners in Lunacy, and that without favour or
' affection, prejudice or malice. So help me GOD.'

And that such oath shall be taken before the Lord Chancellor, in like manner as the usual oaths are administered before the Lord Chancellor to Masters in Ordinary of the said Court of Chancery.

Power to Lord
Chancellor to
direct that the
commissioners
shall perform
the duties in
lunacy usually
referred to
Masters in
Chancery.

III. That it shall and may be lawful for the Lord Chancellor from time to time to order and direct that any of the inquiries and matters connected with the persons and estates of lunatics, usually referred to the Masters in Ordinary to the High Court of Chancery, shall be referred to such commissioners, or one of them; and such commissioners shall, jointly or severally, have,

(a) The persons already appointed, and hereafter to be appointed under this act after the 4th August, 1845, are to be called "The Masters in Lunacy," and to take the same rank and precedence as the Masters in ordinary of the Court of Chancery, 8 & 9 Vict. c. 100, s. 2.

perform, and execute all the powers, duties, and authorities relating to the said inquiries and matters so to be referred to them as aforesaid, now had, performed, and executed by the Masters in Ordinary of the said Court of Chancery, and such other duties for the security and advantage of lunatics and their estates as the Lord Chancellor shall from time to time order and direct (b). 5 & 6 Vict. c. 84.

IV. That the said commissioners shall, by virtue of their appointments to be such commissioners as aforesaid, be and become visitors for superintending, inspecting, and reporting upon, under the order and direction of the Lord Chancellor, the care and treatment of all persons found idiot, lunatic, or of unsound mind by inquisition, jointly with the three visitors appointed under the authority of an act passed in the third and fourth years of the reign of his late majesty King William the Fourth, and intituled "An Act to diminish the Inconvenience and Expense of Commissions in the Nature of Writs *De lunatico inquirendo*; and to provide for the better Care and Treatment of Idiots, Lunatics, and Persons of unsound Mind found such by Inquisition," and shall severally have, perform, and execute the like powers, duties, and authorities as are had, performed, and executed by one of the said visitors being a barrister (c). Commissioners to be ex officio visitors of lunatics. 3 & 4 Wm. 4, c. 36.

V. That the commissioners to be appointed by virtue of this act shall execute commissions in the nature of writs *de lunatico inquirendo*, and shall conduct inquiries connected with lunatics or their estates, and shall perform all other duties to be committed to them by virtue of this act, either separately or together, and at such places, and within such times, and in such manner as the Lord Chancellor shall from time to time order and direct: provided always, and it is hereby declared, that nothing in this act contained shall be deemed or taken to prevent the Lord Chancellor from issuing any commission in the nature of a writ *de lunatico inquirendo*, addressed to any fit and proper person or persons, in addition to such commissioners so to be appointed as aforesaid, if he shall, upon any occasion, deem it proper to do so. Commissioners to execute such duties as the Lord Chancellor shall order. Lord Chancellor may appoint special commissioners.

VI. That upon the death, resignation, or removal from office of any such commissioner as aforesaid to be appointed under the authority of this act, it shall be lawful for the Lord Chancellor to appoint a fit and proper person, qualified as aforesaid, to supply such vacancy. Power to appoint successors to commissioners.

VII. That it shall and may be lawful for the Lord Chancellor from time to time to make such orders as to him shall seem fit and proper for regulating the form and mode of proceeding before and by the said commissioners, and the practice in matters in lunacy: provided always, that a copy of such orders Power to Lord Chancellor to regulate the practice in lunacy.

(b) *Ante*, p. 166.

(c) *Ante*, pp. 628, 629.

5 & 6 Vict. c. 84. shall be laid before both houses of Parliament within fourteen days after the same are made, if Parliament be then sitting, or if not, within fourteen days after the commencement of the next session of Parliament (*d*).

Power to regulate the number on juries (not being less than twelve).

VIII. That it shall and may be lawful for the Lord Chancellor from time to time to make such order or orders as he shall deem fit for regulating and fixing the number of jurymen who shall be sworn to try inquests on commissions in the nature of writs *de lunatico inquirendo*; provided that every inquisition on such commissions shall be found by the oaths of twelve men.

Appointing officers, clerks, and messengers.

IX. That from and after the passing of this act such officers, clerks, and messengers in the office of the said commissioners as the Lord Chancellor and the commissioners of her Majesty's Treasury shall determine to be necessary and proper, shall and may be from time to time appointed.

The office of Clerk of the Custodies abolished.

X. Recites 2 & 3 Wm. 4, c. 111, and 3 & 4 Wm. 4, c. 84: and whereas the said office of Clerk of the Custodies of idiots and lunatics is productive of unnecessary expense to the estates of idiots, lunatics, and persons of unsound mind, found such by inquisition, and it is fit and desirable that such office and the fees thereof should be abolished as soon as can be: be it therefore enacted, that it shall be lawful for the Lord Chancellor to order and direct, as soon as he may find it practicable so to do, having regard to the state of the funds hereinafter mentioned, that the said office of clerk of the custodies of idiots and lunatics and the fees thereof shall cease and determine, and that the said Commissioners or the Secretary of Lunatics shall thenceforth do and perform any of such acts, deeds, matters, and things as have heretofore been done and performed in execution of the duties of the said office of Clerk of the Custodies, and all such acts to be done by the said Commissioners and the Secretary of Lunatics shall in all respects have the same force and effect as if the same had been done by the Clerk of the Custodies or his deputy (*e*); and that all the records, proceedings, books, papers, and documents in the said office of Clerk of the Custodies shall thereupon be by him delivered to such person or persons as the Lord Chancellor shall by any order appoint; and that so much of the said last recited act as enacts that there shall be paid out of the said Consolidated Fund to the Secretary of Lunatics, for expenses attending the office of Clerk of the Custodies of Idiots and Lunatics, the yearly sum of two hundred pounds, shall be and the same is hereby repealed.

Lord Chancellor to fix tables of

XI. That it shall be lawful for the Lord Chancellor from time

(*d*) In pursuance of this act, Lord Lyndhurst, C., on the 27th October, 1842, made certain orders, twenty in number, to take effect on the first day of Michaelmas Term, 1842. These orders are stated in the preceding work, under the several heads to which they relate; see *ante*, pp. 96, 101, 103, 164, 167, 168, 175, 200, 236.

(*e*) *Ante*, pp. 100—102.

to time to order such fees to be received and taken by the clerks to the commissioners to be appointed under this act, and also such fees to be received and taken by the Secretary of Lunatics, as the Lord Chancellor shall in either case judge reasonable and proper; and that the said clerks to the commissioners and the Secretary of Lunatics shall and may thereafter take and receive such fees respectively, and shall pay them into the Bank of England, at such times, and in such manner, and under such regulations, as the Lord Chancellor shall from time to time order and direct, all fees or sums of money so received by them, and that the several sums, when so paid in, shall be placed to the credit of the Accountant-General of the Court of Chancery, to the account intituled "the Suitors' Fee Fund Account."

5 & 6 Vict. c. 84.
fees, to be paid
into suitors fee
fund.

XII. And whereas by an act passed in the second and third years of the reign of his late Majesty King *William* the Fourth, intituled "An Act for making further Provision for the Lord High Chancellor of England in lieu of Fees heretofore received by him," it is enacted (amongst other things), that the fees and emoluments accruing due and payable as therein mentioned for business done in the offices of the Clerk of the Crown, the Clerk of the Letters Patent, the Secretary of Fines, and the Purse-bearer to the Lord Chancellor for the time being, shall be paid into the Bank of England, in the name of the Accountant-General of the said Court, to an account to be intituled "An account of Fees formerly payable to the Lord Chancellor;" be it enacted, that all such fees and emoluments now due, and henceforth to accrue due and payable, as in the said last-mentioned act mentioned, when paid into the Bank of England in the name of the Accountant-General of the said Court, shall be placed to the account of "the Suitors' Fee Fund Account," instead of the said account intituled "an account of fees formerly payable to the Lord Chancellor," and be applied as part of the fund standing to the credit of the said account, intituled "the Suitors' Fee Fund Account."

Fees formerly
payable to Lord
High Chancellor
to be paid into
fee fund.

2 & 3 Wm. 4,
c. 122.

XIII. That out of the said fund standing to the credit of the Accountant-General of the Court of Chancery, intituled "the Suitors' Fee Fund Account," there shall be paid (but subject and without prejudice to the payment of all salaries and sums of money which by any act or acts now in force are authorised to be paid thereout), by the Governor and Company of the Bank of England, by virtue of any order or orders of the Court of Chancery to be from time to time made for that purpose, to each of the commissioners for the time being to be appointed under this act the yearly sum or salary of two thousand pounds, such yearly sums or salaries to be payable free from all taxes, deductions, and abatements whatsoever out of the same or any part thereof, and to be paid by equal quarterly payments on the third day of February, the third day of May, the third day of August, and the third day of November in

Salaries of com-
missioners.

5 & 6 Vict. c. 84. every year; the first of such payments, or proportionate parts thereof, to be computed from the time of their respective appointments, to be made on such of the same days of payment as shall first happen after the dates of such appointments.

Salaries of officers, clerks, &c., and allowances to commissioners and secretary of lunatics.

XIV. That the officers, clerks, and messengers who shall be appointed as herein before directed, and the Secretary of Lunatics and his clerks shall receive, by way of salary for the performance of their several duties, such annual sums as the Lord Chancellor and the Lords Commissioners of her Majesty's Treasury shall from time to time fix and determine; and that the same and such allowances to the said commissioners for their travelling and other expenses, and to the said commissioners and the Secretary of Lunatics for providing offices, and for the other expenses incident to the discharge of the duties of their respective offices, as the Lord Chancellor shall think reasonable, and shall from time to time order and direct, shall be paid and payable at such times and in such manner as the Lord Chancellor shall direct, under an order of the Court of Chancery, out of the said fund, intituled "the Suitors' Fee Fund Account" (f).

Retiring annuities to commissioners.

XV. That it shall be lawful for the Lord Chancellor, by any order or orders to be made from time to time on a petition presented to him for that purpose, to order (if he shall so think fit) an annuity or clear yearly sum of money, not exceeding twelve hundred pounds, to be paid out of the said account, intituled "the Suitors' Fee Fund Account," (but subject as aforesaid,) to any person or persons executing the said office of a Commissioner in Lunacy, if and when such person or persons shall be afflicted with some permanent infirmity disabling him from the due execution of his office, and shall be desirous of resigning the same; and the annuity or yearly sum mentioned in such order or orders shall be paid by the Governor and Company of the Bank of England out of the said fund, intituled "the Suitors' Fee Fund Account," (but subject as aforesaid), by equal quarterly payments, on the third day of February, the third day of May, the third day of August, and the third day of November in every year, to such person or persons, from the period when he or they shall resign his said office, for the term of his life, free from taxes, or proportionate part of the first quarterly payment of such annuity or yearly sum, calculated from the day of the resignation of such person or persons, to be made on the quarterly day of payment which shall first happen after the day of such resignation as aforesaid.

XVI. *Enabled any officer or person whose office or appointment might be abolished or affected by virtue of that act, and who may not be appointed to any office under that act, to make a claim for compensation, within six months after the passing*

of that act; and authorised the Lord Chancellor and the Lords of the Treasury, in every case in which such claim shall be established to their satisfaction, to fix and determine the amount of such annual compensation. 5 & 6 Vict. c. 84.

XVII. That in the construction of this act the words "Lord Chancellor" shall be taken to mean and include also the Lord Keeper or Lords Commissioners for the custody of the great seal of the United Kingdom of Great Britain, or other person or persons for the time being intrusted by virtue of the Queen's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind; and that all powers hereby given to or vested in the commissioners of her Majesty's treasury by this act may be executed by any three of such commissioners for the time being. Construction of act.

STATUTES APPLICABLE TO LUNATIC PRISONERS AND CRIMINALS.

39 & 40 Geo. 3, c. 94.

An Act for the safe custody of Insane Persons charged with Offences. 39 & 40 Geo. 3,
c. 94.
[28th July, 1800.]

WHEREAS persons charged with high treason, murder, or felony, may have been or may be of unsound mind at the time of committing the offence wherewith they may have been or shall be charged, and by reason of such insanity may have been or may be found not guilty of such offence, and it may be dangerous to permit persons so acquitted to go at large: it is therefore enacted, that in all cases where it shall be given in evidence upon the trial of any person charged with treason, murder, or felony (*a*), that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the Court before whom such trial shall be had, shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until his Majesty's pleasure shall be known; and it shall thereupon be lawful for

Preamble.

The jury, in case of any person charged with treason, &c., proving to be insane, to declare whether he was acquitted by them on account of insanity, and the Court shall order him to be kept in custody till his Majesty's pleasure be known, &c.

(*a*) The stat. 3 & 4 Vict. c. 54, s. 3, *post*, p. 648, extends this provision to persons charged with misdemeanors, acquitted on the ground of insanity.

39 & 40 Geo. 3,
c. 94.

his Majesty to give such order for the safe custody of such person, during his pleasure, in such place and in such manner as to his Majesty shall seem fit; and in all cases where any person, before the passing of this act, has been acquitted of any such offences on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried, and still remains in custody, it shall be lawful for his Majesty to give the like order for the safe custody of such person, during his pleasure, as his Majesty is hereby enabled to give in such cases of persons who shall hereafter be acquitted on the ground of insanity.

Persons indicted for any offence, and upon arraignment found to be insane, or if upon trial they shall be so found, &c., the Court shall order them to be kept in custody till his Majesty's pleasure be known.

II. And be it further enacted, That if any person indicted for any offence shall be insane, and shall upon arraignment be found so to be by a jury lawfully impaneled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until his Majesty's pleasure shall be known; and if any person charged with any offence shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a jury to be impaneled to try the sanity of such person; and if the jury so impaneled shall find such person to be insane, it shall be lawful for such Court to order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until his Majesty's pleasure shall be known; and in all cases of insanity so found, it shall be lawful for his Majesty to give such order for the safe custody of such person so found to be insane, during his pleasure, in such place and in such manner as to his Majesty shall seem fit (b).

Persons committed by any justice on account of being dangerous and insane shall not be bailed except by two justices, &c.

III. And, for the better prevention of crimes being committed by persons insane, be it further enacted, That if any person shall be discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, and any of his Majesty's justices of the peace before whom such person may be brought shall think fit to issue a warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by two justices of the peace, one whereof shall be the justice who has issued such warrant, or by the

Court of general quarter sessions, or by one of the justices of his Majesty's Courts in Westminster Hall, or by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal (c). 39 & 40 Geo. 3,
c. 94.

IV. *The fourth section, which was a special provision to protect King George the Third from the intrusion of insane persons, appears to have ceased on his death (d).*

—◆—

1 & 2 Victoria, c. 14.

An Act to repeal so much of an Act of the Thirty-ninth and Fortieth Years of King George the Third as authorizes Magistrates to commit to Gaols or Houses of Correction Persons who are apprehended under Circumstances that denote a Derangement of Mind and a Purpose of committing a Crime; and to make other Provisions for the safe Custody of such Persons. 1 & 2 Vict. c. 14.
[30th March, 1838].

WHEREAS by an Act passed in the thirty-ninth and fortieth years of the reign of his late majesty King George the Third, intituled "An Act for the safe Custody of Insane Persons charged with Offences," it was amongst other things enacted (a). It is, that so much of the said act as is herein-before recited shall be and is hereby repealed. 39 & 40 Geo. 3,
c. 94.
Recited act in
part repealed.

II. That in all cases where any person shall be in custody at the time of the passing of this act under or by virtue of any warrant for commitment made or issued by any of her Majesty's justices of the peace under the authority of the said herein-before recited provisions of the said act of the thirty-ninth and fortieth years of his late Majesty King George the Third, and hereby repealed, and if at any time after the passing of this act any Persons in custody under the repealed provisions of recited act, or hereafter apprehended as insane or dangerous idiots, may be sent to lunatic asylums.

(c) This section is repealed by 1 & 2 Vict. c. 14, s. 1. It was held that a warrant of commitment by one justice of the peace under that section of the act, stating that "A. had been discovered and apprehended under circumstances that denoted a derangement of mind, and a purpose of committing a crime, (that is to say, an assault and breach of the peace) for which, if committed, he would be liable to be indicted, and that it appeared to the justice that he ought to issue a warrant for committing him as a dangerous person suspected to be insane," sufficiently expressed the cause of commitment, within the meaning of the statute. Lord Tenterden, C. J. said, that the object of that clause of the statute was, to prevent the commission of crimes by insane persons, and to afford due protection to the public, by providing for the safe custody of those, who, by their conduct, may be reasonably suspected to be insane, and therefore dangerous persons; *Ex parte Gourlay*, 1 Man. & Ryl. 619; 7 B. & C. 669.

(d) See *ante*, p. 113.

(a) The third section of 39 & 40 Geo. 4, c. 94, was here set out verbatim, *ante*, p. 642.

1 & 2 Vict. c. 14.

Justices may inquire into settlement of lunatics or dangerous idiots, and make order for payment of their maintenance, &c.

If settlement cannot be ascertained.

Nothing herein to prevent relations from taking lunatics under their own care.

Appeal.

person shall be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, it shall and may be lawful for any two justices of the peace of the county, city, borough, or place where such person shall be so kept in custody or apprehended to call to their assistance a physician, surgeon, or apothecary, and if upon view and examination of the said person so in custody or apprehended, or from other proof, the said justices shall be satisfied that such person is insane or a dangerous idiot, the said justices, if they shall so think fit, by an order under their hands and seals, directed to the keeper of the gaol or house of correction, if in custody at the time of passing this act, or if hereafter apprehended, to the constable or overseers of the poor of the parish, township, or place where such person shall be apprehended, shall cause the said person to be conveyed to and placed in the county lunatic asylum, provided there be one situated within or belonging to the county, in which such person shall be in custody at the time of passing this act, or shall be hereafter apprehended, and if there be no such asylum, then to some public hospital, or some house duly licensed for the reception of insane persons; and it shall be lawful for the said justices to inquire into and ascertain, by the best legal evidence that can be procured under the circumstances, of personal legal disability of such insane person or dangerous idiot, the place of the last legal settlement of such person; and it shall and may be lawful for such two justices to make an order under their hands and seals upon the overseers or churchwardens of such parish, township, or place where they adjudge him or her to be legally settled, to pay all reasonable charges of examining such person, and conveying him or her to such county lunatic asylum, public hospital, or licensed house, and to pay such weekly sum for his or her maintenance in such place of custody as they or any two justices shall, by writing under their hands, from time to time direct; and where such place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been in custody or apprehended: Provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from taking such insane person or dangerous idiot under their own care and protection, if he shall enter into sufficient recognizance for his or her peaceable behaviour or safe custody, before two justices of the peace, or the court of quarter sessions, or one of the judges of her Majesty's courts in Westminster Hall: Provided always, that the churchwardens and overseers of the parish in which the justices shall adjudge any insane person or dangerous idiot to be settled may appeal against any such order to the next general quarter sessions of the peace to be holden for the county where such order shall be made, in

like manner and under like restrictions and regulations as against any order or removal, giving reasonable notice thereof to the clerk of the peace of the county, riding, or division, or to the town clerk of the city, borough, or place, as the case may be, upon whose rates the burden of maintaining such insane person or dangerous idiot might fall, if such order should be invalid, and such clerk of the peace or town clerk shall be respondent in such appeal, which appeal the justices of the peace assembled at the said general quarter sessions are hereby authorized and empowered to hear and determine, in the same manner as appeals against orders of removals are now heard and determined. 1 & 2 Vict. c. 14.

III. That if upon examination it shall appear to the physician, surgeon, or apothecary present at the examination of any person in custody at the time of passing this act as aforesaid, that he or she is not an insane person or a dangerous idiot, and that such person may be suffered to go at large with safety, it shall and may be lawful for such medical person and he is hereby required to give a certificate to that effect, signed by him, to the visiting justices of the gaol or house of correction in which such person is in custody, who are hereby required to transmit the same forthwith to her Majesty's principal Secretary of State for the Home Department, who, if he shall so think fit, shall order the liberation of such person from custody. Persons proved not to be insane may be liberated.

IV. That nothing herein contained, except where otherwise expressly mentioned, shall alter the laws relating to the discharge of persons who may cease to be insane or dangerous idiots from any county lunatic asylum, public hospital or house duly licensed for the reception of insane persons, nor authorize the removal by any parish officer of any poor person from such asylum, public hospital, or licensed house, without an order for that purpose made by two justices of the peace for the county in which such house shall be situated, after due inquiry into the circumstances of the case, unless such person shall have been discharged as cured. Act not to alter laws relating to the discharge of recovered lunatics.

V. That this act shall extend only to England and Wales. Act to extend to England and Wales.

VI. And be it enacted, That this act shall commence and take effect immediately from and after the passing thereof. Commencement of act.

3 & 4 Vict. c. 54.

CONFINEMENT AND MAINTENANCE OF INSANE PRISONERS.

3 & 4 Vict. c. 54.

An Act for making further Provision for the Confinement and Maintenance of Insane Prisoners. [4th August, 1840.]

Prisoners becoming insane, two justices may inquire, with medical aid respecting such insanity ;

If certified to be insane, Secretary of State to grant warrant for removal to lunatic asylum.

If afterwards sane, how to be dealt with.

Warrant for removal back to prison, or to discharge.

WHEREAS it is expedient that further provision should be made for the confinement and maintenance of insane prisoners: it is therefore enacted, that if any person, while imprisoned in any prison or other place of confinement under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour or to keep the peace or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the Peace, or under any other than civil process, shall appear to be insane, it shall be lawful for any two justices of the peace of the county, city, borough, or place where such person is imprisoned to inquire, with the aid of two physicians or surgeons, as to the insanity of such person; and if it shall be duly certified by such justices and such physicians or surgeons that such person is insane, it shall be lawful for one of her Majesty's principal secretaries of state, upon receipt of such certificate, to direct, by warrant under his hand, that such person shall be removed to such county lunatic asylum or other proper receptacle for insane persons as the said secretary of state may judge proper and appoint; and every person so removed under this act, or already removed or in custody under any former act relating to insane prisoners, shall remain under confinement in such county asylum or other proper receptacle as aforesaid, or in any other county lunatic asylum or other proper receptacle to which such person may be removed, or may have been already removed, or in which he may be in custody by virtue of any like order, until it shall be duly certified to one of her Majesty's principal secretaries of state, by two physicians or surgeons, that such person has become of sound mind, whereupon the said secretary of state is hereby authorised, if such person shall still remain subject to be continued in custody, to issue his warrant to the keeper or other person having the care of any such asylum or receptacle as aforesaid, directing that such person shall be removed back from thence to the prison or other place of confinement from whence he or she shall have been taken, or, if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged (a).

(a) If any convict confined in the Pentonville prison shall become or be found to be insane during such confinement, and be so reported by the com-

II. That in all such cases as aforesaid, unless one of her Majesty's principal Secretaries of State shall otherwise direct, it shall be lawful for such two justices, or any other two justices of the peace of the county, city, borough, or place where such person is imprisoned, to inquire into and ascertain, by the best evidence or information that can be obtained under the circumstances, of the personal legal disability of such insane person, the place of the last legal settlement, and the pecuniary circumstances of such person; and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, it shall be lawful for such two justices, by order under their hands, to direct the overseers of the parish where they adjudge him or her to be lawfully settled, or in case such parish be comprised in a union declared by the poor law commissioners, or shall be under the management of a board of guardians established by the poor law commissioners, then the guardians of such union, or of such parish, (as the case may be), to pay on behalf of such parish, in the case of any person removed under this act, all reasonable charges for inquiring into such person's insanity, and for conveying him or her to such county lunatic asylum or receptacle for insane persons, and to pay such weekly sum as they or any two justices shall, by writing under their hands, from time to time direct, for his or her maintenance in such asylum or receptacle in which he or she shall be confined; and in the case of any person removed under any former act relating to insane prisoners, to pay such weekly sum as they or any two such justices as aforesaid shall, by writing under their hands, from time to time direct, for his or her maintenance in the asylum or receptacle in which he or she is confined; and when the place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been imprisoned; but if it shall appear, upon inquiry, to the said or any other two justices of the county, city, borough, or place where such person is imprisoned, that any such person is possessed of property, such property shall be applied for or towards the expenses incurred or to be hereafter incurred on his

3 & 4 Vict. c. 54.

Justices of the peace to inquire into the settlement of such prisoner, and make orders on parish for maintenance, &c.

When settlement not found, order to be made on treasurer of county. In case the person is possessed of property, it shall be applied towards the expense.

missioners for governing such prison to one of the principal Secretaries of State, such Secretary of State may by warrant under his hand, order that such insane convict shall be forthwith removed to such lunatic asylum as the Secretary of State may judge proper; and every convict so removed shall remain under confinement in such asylum, or in any other lunatic asylum to which such convict may be lawfully removed, until it shall be duly certified to one of the principal Secretaries of State by two physicians or surgeons that such convict has become of sound mind, whereupon, if the time for which such convict was sentenced to be imprisoned shall not have expired, the Secretary of State shall issue his warrant to the governor or other person having the care of such asylum, ordering that such convict be remanded to the Pentonville prison, or, if the period of imprisonment of such convict shall have expired, that he shall be discharged; 5 & 6 Vict. c. 29, s. 23.

3 & 4 Vict. c. 54.

or her behalf, and they shall from time to time, by order under their hands, direct the overseers of any parish where any money or securities for money, goods, chattels, lands, or tenements of such person shall be, to seize so much of the said money, or to seize and and sell so much of the said goods and chattels, or receive so much of the annual rent of the lands or tenements of such person, as may be necessary to pay the charges, if any, of inquiring into such person's insanity, and of removal, and also the charges of maintenance, clothing, medicine, and care of any such insane person, accounting for the same at the next special petty sessions of the division, city, or borough in which such order shall have been made, such charges having been first proved to the satisfaction of such justices, and the amount thereof being set forth in such order.

Persons charged with misdemeanors, acquitted on the ground of insanity, may be kept in custody.

39 & 40 Geo. 3, c. 94.

III. And whereas it is expedient that the same provision should be made with regard to persons charged with misdemeanors as is made with regard to persons charged with treason, murder, or felony by virtue of an act passed in the session holden in the thirty-ninth and fortieth years of the reign of King George the Third, intituled "An Act for the safe Custody of Insane Persons charged with Offences;" be it therefore enacted, That in all cases where it shall be given in evidence upon the trial of any person charged with any misdemeanor that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence the Court before whom such trial shall be had shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until her Majesty's pleasure shall be known; and it shall thereupon be lawful for her Majesty to give such order for the safe custody of such person, during her pleasure, in such place and in such manner as to her Majesty shall seem fit; and in all cases where any person before the passing of this act has been acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried, and still remains in custody, it shall be lawful for her Majesty to give the like order for the safe custody of such person during her pleasure as her Majesty is hereby enabled to give in the case of any person who shall hereafter be acquitted on the ground of insanity; and in all such cases any two justices of the peace of the county, city, or place where such person shall have been acquitted on account of insanity, or shall be kept in custody, shall have the like power as is given in the cases before mentioned to inquire into and ascertain the last

Like powers as in cases before mentioned for inquiring into settlement and ordering maintenance.

legal settlement of such insane person, and also to make the like order or orders for the payment of such person's maintenance and of other charges as above mentioned. 8 & 4 Vict. c. 54.

IV. That if any person shall feel aggrieved by any order of any justices as aforesaid, such person may appeal to the justices of the peace at the next quarter sessions of the peace to be holden in and for the county, city, borough, or place where the matter of appeal shall have arisen, the person so appealing having given to the justices against whose order such appeal shall be made ten days notice of his or her intention to make such appeal; and the said justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to make such determination as they shall think proper, and shall and may also award such further satisfaction to the party injured, or such costs to either of the parties, as they shall judge reasonable and proper; and every such determination shall be final and conclusive to all intents and purposes whatsoever, and no certiorari shall be allowed. Persons aggrieved may appeal from the order of the justices.

V. That the overseers of the parish in which the justices shall adjudge any insane person to be settled, or in case such parish be comprised in a union, or be under the management of a board of guardians, then either the guardians of such union or parish (as the case may be), or the overseers of such parish, may appeal against such order to the general quarter sessions of the peace to be holden for the county, city, borough, or place where such order shall be made, in like manner and under like restrictions and regulations as against any order of removal, giving reasonable notice thereof to the clerk of the peace of such county, city, borough, or place, who shall be respondent in such appeal, which appeal the justices of the peace assembled at the said general quarter sessions are hereby authorized and empowered to hear and determine in the same manner as appeals against orders of removal are now heard and determined. Overseers or guardians may appeal against the order of the justices on the parish.

VI. Repealed 55 sect. 9 Geo. 4, c. 40.

VII. And whereas by the said last-mentioned act it was among other things enacted, that it should be lawful for two justices of the peace of the county where any person should be kept in custody as an insane person by order of any Court, or by his Majesty's order subsequent thereunto, to inquire into and ascertain the settlement and circumstances of such insane person, and to make order for the payment of such weekly sum for his or her maintenance as one of his Majesty's principal Secretaries of State should, by writing under his hand, from time to time direct: And whereas it is expedient that so much of the said act as relates to such direction to be given by such Secretary of State should be repealed, and other provisions made in the place thereof: Be it therefore enacted, That so much of the said act as relates to such directions to be given by such Secretary of So much of 9 Geo. 4, c. 40, s. 54, as relates to orders for the payment of money for amount of maintenance of insane prisoners, to be settled by Secretary of State, repealed.

3 & 4 Vict. c. 54. State shall be and the same is hereby repealed; and that it shall be lawful for such two justices, by order under their hands, to direct the overseers of the parish in which they shall adjudge such insane person as last aforesaid to be legally settled, or in case such parish shall be comprised in a union declared by the Poor Law Commissioners, or shall be under the management of a board of guardians established by the Poor Law Commissioners, then the guardians of such union or parish, as the case may be, to pay such weekly sum for the maintenance of such person as they or any such two justices shall, by writing under their hands, direct (a).

Rules for interpretation of this act.

VIII. And in order to remove doubts as to the meaning of certain words in this act, be it enacted, That the words "Treasurer of the county, city, borough, or place" shall be deemed to include any officer in any county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate, who has the custody of any funds assessed upon or raised in or belonging to such county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate, in the nature of county rates, and applicable to the purposes to which county rates are applicable; that the words "Insane Person" shall be deemed to include any lunatic or dangerous idiot; and that the words "County, City, Borough, or Place," shall be deemed to include any county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate; and the word "Parish," shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor.

Limitation of act.

IX. And be it enacted, That this act shall extend only to England and Wales.

TREATMENT OF LUNATICS IN ENGLAND AND WALES.

8 & 9 Vict. c. 100.

8 & 9 Vict. c. 100. *An Act for the Regulation of the Care and Treatment of Lunatics.* [4th August, 1845.]

Repeal of former statutes.

The following acts repealed, except as they repeal other acts:

BE it enacted, That from and after the passing of this act an act passed in the session of Parliament holden in the second and third years of the reign of his late Majesty King William the

(a) The 9 Geo. 4, c. 40; is repealed by 8 & 9 Vict. c. 126, s. 1, but it seems that the above section remains in force.

Fourth, intituled "An Act for regulating for Three Years, and from thence until the End of the then next Session of Parliament, the Care and Treatment of Insane Persons in England;" and an act passed in the session of Parliament holden in the third and fourth years of the reign of his said late Majesty, intituled "An Act to amend an Act of the Second and Third Year of His present Majesty, for regulating the Care and Treatment of Insane Persons in England;" and an act passed in the session of Parliament holden in the fifth and sixth years of the reign of his said late Majesty, intituled "An Act to continue for Three Years, and from thence to the End of the then next Session of Parliament, Two Acts of the Second and Third Year and the Third and Fourth Year of His present Majesty, relating to the Care and Treatment of Insane Persons in England;" and an act passed in the session of Parliament holden in the first and second years of the reign of her present Majesty, intituled "An Act to continue for Three Years, and from thence to the End of the then next Session of Parliament, Two Acts relating to the Care and Treatment of Insane Persons in England;" and an act passed in the session of Parliament holden in the fifth year of the reign of her said present Majesty, intituled "An Act to amend, and continue for Three Years, and from thence to the End of the next Session of Parliament, the Laws relating to Houses licensed by the Metropolitan Commissioners and Justices of the Peace for the Reception of Insane Persons, and for the Inspection of County Asylums and Public Hospitals for the Reception of Insane Persons;" shall be and the same are hereby repealed, save and except so far as they or any of them repeal any other act: Provided always, that until the appointment for any jurisdiction of visitors and their clerk under the provisions of this act the visitors and clerk appointed for such jurisdiction under the said repealed acts or any of them shall respectively have and perform the powers, authorities and duties which they would have respectively had or performed if appointed under this act: Provided also, that all licences heretofore granted shall remain in force for the periods for which they were respectively granted, unless revoked as herein-after provided; and that all orders, matters, and things which have been granted, made, done, or directed to be done in pursuance of the said repealed acts or any of them shall be and remain as good, valid, and effectual to all intents and purposes as if the said repealed acts had not been repealed, except so far as such orders, matters, or things are expressly made void or affected by this act; and that all fees, charges, and expenses which have be-

8 & 9 Vict. c. 100.

2 & 3 Wm. 4, c. 107.

3 & 4 Wm. 4, c. 64.

5 & 6 Wm. 4, c. 22.

1 & 2 Vict. c. 73.

5 Vict. c. 4.

5 & 6 Vict. c. 87.

Proviso that present visitors and clerk shall act under this act till new ones are appointed; and that licenses heretofore granted shall remain in force, unless, &c.

8 & 9 Vict. c. 100.

come payable under the said repealed acts or any of them shall be payable in the same manner and from the same funds as would have been applicable thereto in case such acts had not been repealed (a).

(a) A return to *habeas corpus*, directing the keeper of a lunatic asylum to bring up the body of R. F., certified that the said R. F. was, on a certain day, received under 2 & 3 Wm. 4, c. 107, and that on the day and year aforesaid the keeper received an order and medical certificates, in the form directed by that act, (setting them out). It then further certified, that on the 22nd November, 1845, an order and two medical certificates, under 8 & 9 Vict. c. 100 (setting them out), were delivered to the keeper; and concluded, "that the said R. F. is now detained under our custody under and by virtue of the last mentioned act of Parliament":—It was held, that the return was sufficient under the 2 & 3 Wm. 4, c. 107, as it sufficiently appeared that the order and certificates returned were received at the same time with the lunatic, and that they were those under which he was received. The 8 & 9 Vict. c. 100, s. 1, which repeals the 2 & 3 Wm. 4, c. 107, leaves orders made under the latter act so far valid as to amount to a justification of a detainer in an asylum. *In re Fell*, Law J. 1846, M. C. p. 25.

PATTESON, J., in giving judgment, said—"I should be sorry if my decision should lead to the idea that if a party had been received contrary to the provisions of the statute, any visiting by a medical man at that time would be sufficient to justify his detention. It is clear the order intended by these statutes is an order made at the time when the party is received into the asylum. The point, whether or not this person is or is not really a lunatic having, very properly, not been discussed, it comes to the simple question of the propriety of the documents set out in the return. I cannot think the last act of Parliament makes it necessary that in the case of every person detained under the former act, there should be a fresh order obtained; for it would be a fearful thing to hold that all persons confined in lunatic asylums were to be discharged by the operation of the last act: but it seems to me that it was intended that an order under the repealed act should still be to some extent valid, especially as the 99th section allows the keeper to justify the detainer under the first order. I cannot, however, be surprised that there should have been a new order obtained in the present case. It is said the statements in the return are not sufficiently connected together, so as to shew that the detention of Mr. Fell was in consequence of the order and certificates. I do not think we ought to look at a return in the same way as at a special plea. If it appears upon the face of it that the party is properly in custody, that is sufficient. Now in the present case, it appears that the person in question was received under the 2 & 3 Wm. 4, c. 107, and that the keeper of the asylum did receive an order and certificates, copies of which are set out in the return; but it is not expressly stated that this order and certificates were received before the reception of the lunatic. It is, in my opinion, sufficient to state that they were received in order to shew that they were received along with the lunatic. Next, it is said that it does not appear by whom the order and certificates were delivered. I do not think it is necessary for such a statement, for it sufficiently appears that the order and certificates returned were those under which the party was received. Then we come to the question, whether the first order and certificates are themselves sufficient. Now I think nothing of the name of Robert Fell being inserted instead of the wife's name; for considering that this order was lodged so long ago as 1842, it is rather too much to come now and object that it is not in the precise form required in the act. I was at first struck with the objection that the wife's place of abode was not stated; but I think that the residence stated in the order must be taken to be that of the wife: it is true it is the place of abode of the lunatic himself, but as the person sending him was his wife, it must be assumed to be her place of abode also. I think, therefore, that the order of detainer was right, and that the party cannot be discharged.

II. That the persons already appointed and hereafter to be appointed under an act passed in the session of Parliament holden in the fifth and sixth years of the reign of her present Majesty, intituled "An Act to alter and amend the Practice and Course of Proceeding under Commissions in the Nature of Writs *De lunatico inquirendo*," whereby the Lord Chancellor is empowered to appoint two persons, to be called "The Commissioners in Lunacy," shall henceforth be and be called "The Masters in Lunacy," and shall take the same rank and precedence as the Masters in Ordinary of the High Court of Chancery.

8 & 9 Vict. c. 100.

Commissioners in lunacy under 5 & 6 Vict. c. 84, to be henceforth called "The Masters in Lunacy."

III. That the Right Honourable Lord Ashley, the Right Honourable Lord Seymour, the Right Honourable Robert Vernon Smith, Robert Gordon of Lewiston in the County of Dorset, Esquire, Francis Barlow of Montague Square, Esquire, Thomas Turner of Curzon Street, Esquire, Henry Herbert Southey of Harley Street, Esquire, John Robert Hume of Curzon Street aforesaid, Esquire, Bryan Waller Proctor of Gray's Inn, Esquire, James William Mylne of Lincoln's Inn, Esquire, and John Hancock Hall of the Middle Temple, Esquire, (which said Thomas Turner, Henry Herbert Southey, and John Robert Hume, and no other of the said persons are physicians, and which said Bryan Waller Proctor, James William Mylne, and John Hancock Hall (*b*), and no other of the said persons, are practising barristers at law of ten years standing at the Bar and upwards,) and their respective successors, to be appointed as hereinafter provided, shall be commissioners for the purposes of this act, to be called "The Commissioners in Lunacy;" and that such commissioners for the time being shall respectively hold their offices during good behaviour, and shall not, so long as they shall remain such commissioners, and receive any salary under this act, accept, hold, or carry on any other office or situation, or any profession or employment, from which any gain or profit shall be derived; and that there shall be paid to each of the six commissioners for the time being who shall be physicians, surgeons, or barristers of five years standing and upwards, out of the monies or funds herein-after mentioned, over and above their respective travelling and other expenses whilst employed in visiting any houses, hospitals, asylums, gaols, workhouses, or other places, in pursuance of this act, the yearly salary of one thousand and five hundred pounds, by four

Appointment of "The Commissioners in Lunacy."

These statutes were passed for the protection of the public, and would be rendered useless by technical objections. I must not, however, be understood to say that I think the reasons given by the medical men in the certificates are sufficiently explicit. As at present advised, the 46th section is not complied with, by the facts which are here stated. I form my opinion as to the return solely on the validity of the first order." *In re Fell*, Law J. 1846, M. C. 28; 3 Dowl. & L. 373.

(*b*) After Mr. Hall's death, which happened on the 30th October, 1845, W. G. Campbell, of the Middle Temple, Barrister, was appointed a commissioner.

8 & 9 Vict. c. 100.

Salary.

equal quarterly payments, on the twenty-ninth day of September, the twenty-fifth day of December, the twenty-fifth day of March, and the twenty-fourth day of June in every year, the first of each such payments (or a proportionate part thereof, to be computed, in the case of the commissioners appointed by this act, from the passing of the act, and in case of the commissioners to be appointed as hereinafter provided, from the time of the respective appointments of such commissioners,) to be made to such commissioners respectively on such of the same days of payment as shall first happen after the passing of this act, or after the dates of their respective appointments, as the case may be.

In case of death, disqualification, refusal, or inability of commissioners, others to be appointed.

IV. That as often as any commissioner appointed by this act or to be appointed under this present provision shall die, or be removed for ill behaviour, or be disqualified, or resign, or refuse to act, or become unable by illness or otherwise to perform the duties or exercise the powers of this act, the Lord Chancellor shall appoint a person to be a commissioner in the room of the commissioner who shall die, or be removed, or be disqualified, or resign, or refuse or become unable to act as aforesaid, but so that every person so appointed in the room of a physician shall be a physician or surgeon, and every person so appointed in the room of a barrister of five years standing at the Bar and upwards shall be a practising barrister of not less than five years standing at the Bar (*c*), and every person appointed in the room of any other commissioner shall be neither a physician nor a surgeon, nor a practising barrister; and until such appointment it shall be lawful for the continuing commissioners or commissioner to act as if there were no such vacancy.

Provision for retiring pension to incapacitated commissioners.

V. That any superannuation allowance to be granted to any commissioner appointed or to be appointed under this act shall be granted only in respect of services performed under this act, and shall be subject to the provisions of an act passed in the fourth and fifth years of his late Majesty King William the Fourth, intituled "An Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensation, and Allowances to be made to Persons in respect of their having held Civil Offices in His Majesty's Service, so far as such Provisions relate to Officers and Clerks who had entered or might enter the Public Service subsequent to the fourth day of August one thousand eight hundred and twenty-nine."

4 & 5 Wm. 4, c. 24.

Oath and Seal of Commissioners.

Commissioners to take the following oath.

VI. That every person hereby or hereafter appointed a commissioner under this act shall, before he acts in the execution of his duty as a commissioner, take an oath to the following effect; (that is to say,)

(*c*) See the word Barrister defined, s. 114.

‘ I, *A.B.* do swear, that I will discreetly, impartially, and faithfully execute all the trusts and powers committed unto me by virtue of an act of Parliament made in the ninth year of the reign of her Majesty Queen Victoria, intituled [*here insert the title of the act*]; and that I will keep secret all such matters as shall come to my knowledge in the execution of my office (except when required to divulge the same by legal authority, or so far as I shall feel myself called upon to do so for the better execution of the duty imposed on me by the said act).
 ‘ So help me GOD.’

8 & 9 Vict. c. 100.

Which oath it shall be lawful for the Lord Chancellor to administer to every such commissioner; and any three of the commissioners who shall have previously taken the oath are hereby authorized to administer such oath to any other commissioner.

VII. That the commissioners shall cause to be made a seal of the commission, and shall cause to be sealed or stamped therewith all licences, orders, and instruments granted or made, or issued, or authorized by the commissioners, in pursuance of this act, except such orders or instruments as are hereinafter required or directed to be given or signed and sealed by one commissioner or two commissioners; and all such licenses, orders, and instruments, or copies thereof, purporting to be sealed or stamped with the seal of the commission, shall be received as evidence of the same respectively, and of the same respectively having been granted, made, issued, or authorized by the commissioners, without any further proof thereof; and no such license, order, or instrument, or copy thereof, shall be valid, or have any force or effect, unless the same shall be so sealed or stamped as aforesaid (*d*).

Commissioners to have a common seal.

Evidence.

VIII. That the commissioners or any five of them shall, as soon as may be after the passing of this act, meet at the usual office or place of business now occupied or used by the Metropolitan Commissioners in Lunacy, or at such other place as the Lord Chancellor shall direct, and elect one of the same commissioners (not being a physician or a barrister receiving any salary by virtue of this act) to be the permanent chairman of the commission; and in case such permanent chairman, or any other permanent chairman who shall thereafter be elected in pursuance of this provision, shall die, or decline or become incapable to act as chairman, or shall cease to be a commissioner, then and as often as the same shall happen the commissioners for the time being, or any five of them, at any meeting to be specially summoned for that purpose, shall elect another person to be the permanent chairman of the commission in the place of

Commissioners to elect a permanent chairman.

(*d*) See 8 & 9 Vict. c. 113, to facilitate the admission in evidence of official documents.

8 & 9 Vict. c. 100. the chairman who shall so die, or decline or become incapable to act, or cease to be a commissioner as aforesaid; and in case the permanent chairman for the time being shall be absent from any meeting it shall be lawful for the majority of the commissioners present at any such meeting to elect a chairman for that meeting; and in all cases every question shall be decided by a majority of voters (the chairman, whether permanent or temporary, having a vote), and in the event of an equality of votes the chairman for the time being shall have an additional or casting vote (*e*).

Secretary of Commissioners.

Appointment of
secretary.

IX. That Robert Wilfred Skeffington Lutwidge, of Lincoln's Inn, Esquire, shall be the Secretary to the Commissioners; and that the said Robert Wilfred Skeffington Lutwidge, and every secretary to be hereafter appointed, shall be removable from his office by the Lord Chancellor, on the application of the commissioners; and that as often as the said Robert Wilfred Skeffington Lutwidge, or any secretary to be appointed under this present provision, shall die, or resign, or be removed from his office, the commissioners, with the approbation of the Lord Chancellor, shall appoint a person to be secretary in the room of the said Robert Wilfred Skeffington Lutwidge, or other the secretary who shall die or resign or be removed as aforesaid; and that the secretary for the time being shall, in the performance of all his duties, and in all respects, be subject to the inspection, direction, and control of the commissioners; and that there shall be paid to the secretary for the time being, out of the monies and funds hereinafter mentioned (*f*), the yearly salary of eight hundred pounds, by four equal quarterly payments, on the twenty-ninth day of September, the twenty-fifth day of December, the twenty-fifth day of March, and the twenty-fourth day of June in every year, the first of such payments (or a proportionate part thereof, to be computed, in the case of the said Robert Wilfred Skeffington Lutwidge, from the passing of this act, and in case of every other secretary from the time of his appointment) to be made to the said Robert Wilfred Skeffington Lutwidge on such of the same days of payment as shall first happen after the passing of this act, and to every other secretary for the time being on such of the same days of payment as shall first happen after his appointment.

Salary.

Provision for
retiring pension
to secretary.

X. That any superannuation allowance to be granted to any secretary, appointed or to be appointed under this act, shall be granted only in respect of services performed under this act, and shall be subject to the provisions of an act passed in the fourth and fifth years of his late Majesty King William the

(*e*) See s. 70, *post*, which authorizes the commissioners or any five of them to make rules for their own government.

(*f*) See ss. 33, 35.

Fourth, intituled "An Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensation, and Allowances to be made to Persons in respect of their having held Civil Offices in his Majesty's Service, so far as such Provisions relate to Officers and Clerks who had entered or might enter the Public Service subsequent to the fourth day of August, one thousand eight hundred and twenty-nine." 8 & 9 Vict. c. 100.
4 & 5 Wm. 4,
c. 24.

XI. That it shall be lawful for the commissioners to appoint, during pleasure, any two persons as clerks to the commissioners, and to allow to such two clerks any such yearly or other salaries (not exceeding in the whole the yearly sum of two hundred pounds for such two clerks) as the commissioners shall think proper; and further, that it shall be lawful for the commissioners, at any time hereafter, in case they shall find it expedient so to do, for the due performance of the business of the commission, with the consent of the Lord High Treasurer, or of the commissioners of her Majesty's treasury, or of any three or more of them, to appoint one or two other clerks (in addition to the two clerks firstly hereinbefore mentioned), and to allow to such one or two additional clerk or clerks any such yearly or other salaries as the commissioners shall think fit (not exceeding in the whole the yearly sum of two hundred pounds); and such salaries shall be paid out of the monies or funds hereinafter mentioned (*g*). Power for the commissioners to appoint two clerks.

XII. That every person appointed to be secretary or clerk as aforesaid, shall, before he shall act as such secretary or clerk, take the following oath, to be administered by any one of the commissioners:

'I, A. B., do swear, that I will faithfully execute all such trusts and duties as shall be committed to my charge as Secretary to the Commissioners in Lunacy [or as Clerk to the Commissioners in Lunacy, as the case may be]; and that I will keep secret all such matters as shall come to my knowledge in the execution of my office (except when required to divulge the same by legal authority).
So help me God.'

XIII. That immediately after the passing of this act the Clerk to the Metropolitan Commissioners in Lunacy, appointed under the said act of the second and third years of the reign of his late Majesty King William the fourth, or under any of the other acts hereby repealed, shall forthwith deliver up every book, paper, and document, and all goods, property, and effects which may be in his possession by virtue of his said office, or in consequence thereof, or connected with the business thereof, to the Commissioners in Lunacy hereby appointed; and every Clerk of the Metropolitan Commissioners to deliver all documents to the commissioners under this act.

8 & 9 Vict. c. 100. book, paper, and document, and all goods, property, and effects respectively, which shall be so delivered unto, or shall hereafter come into the possession of the Commissioners in Lunacy by virtue of their office, shall thereupon be vested in and shall be deemed to be the property of the Commissioners in Lunacy for the time being.

Jurisdiction of Commissioners.

Jurisdiction within which commissioners are to grant licenses, and termed their immediate jurisdiction, defined.

XIV. That it shall be lawful for the commissioners (if and when they shall think fit) to grant a license to any person to keep a house for the reception of lunatics, or of any sex or class lunatics, within the places following; (that is to say), the cities of London and Westminster, the county of Middlesex, the borough of Southwark, and the several parishes and places hereinafter mentioned; (that is to say), Brixton, Battersea, Barnes, Saint Mary Magdalen Bermondsey, Christ Church, Clapham, Saint Giles Camberwell, Dulwich, Saint Paul Deptford, Gravenay, Kew Green, Kennington, Saint Mary Lambeth, Mortlake, Merton, Mitcham, Saint Mary Newington, Norwood, Putney, Peckham, Saint Mary Rotherhithe, Roehampton, Streatham, Stockwell, Tooting, Wimbledon, Wandsworth, and Waltham, in the county of Surrey; Blackheath, Charlton, Deptford, Greenwich, Lewisham, Lee, Southend, and Woolwich, in the county of Kent; and East Ham, Layton, Laytonstone, Low Layton, Plaistow, West Ham, and Walthamstow, in the county of Essex; and also within every other place (if any) within the distance of seven miles from any part of the said cities of London or Westminster, or of the said borough of Southwark; all which cities, county, borough, parishes, and places aforesaid shall be and are hereafter referred to as the immediate jurisdiction of the commissioners.

Commissioners to hold quarterly and special meetings for granting licenses.

XV. That the commissioners or some five of them shall meet at the usual office or place of business which shall for the time being be occupied or used by the said commissioners, or at such other place as the Lord Chancellor may direct, on the first Wednesday in the months of February, May, July and November in every year, in order to receive applications from persons requiring houses to be licensed for the reception of lunatics within the immediate jurisdiction of the commissioners, and (if they shall think fit) to license the same: and in case on any such occasion five commissioners shall not be present the meeting shall take place on the next succeeding Wednesday, and so on weekly until five commissioners shall be assembled; and the commissioners assembled at every such meeting shall have power to adjourn such meeting from time to time and to such place as they shall see fit: provided always, nevertheless, that it shall be lawful for any five of the commissioners at any other time, at any meeting duly summoned under the provisions in that behalf

herein-after contained, (e) to receive applications from persons requiring houses to be licensed as aforesaid, and, if they shall think fit, to license the same. 8 & 9 Vict. c. 100.

XVI. That when and so often as any commissioner shall by writing under his hand require the secretary to convene a meeting of the commissioners for a purpose or purposes specified in such writing, or for the general despatch of business, such secretary is hereby required to convene such meeting by summons to the other commissioners, or such of them as shall be then in England and shall have an address known to the secretary, and to give them, as far as circumstances will admit, not less than twenty-four hours notice of the place, day, and hour where and on and at which such meeting is intended to be held, and also to state in the summons the purpose or purposes of such meeting, as specified by the commissioner requiring the same to be convened; and then and in every such case it shall be lawful for any three of the commissioners to assemble themselves to consider, and (if they shall think fit) to execute the purpose or purposes of such meeting: provided always, nevertheless, that nothing shall be done at any such meeting, at which less than five commissioners shall be present, which by this act is required to be done by five commissioners; provided also, that every such meeting shall, as far as circumstances will admit, be held at the usual office or place of business of the commissioners. Provisions for summoning special meetings.

License by Justices.

XVII. That in all places not being within the immediate jurisdiction of the commissioners the justices (f) for the county or borough assembled in general or quarter sessions shall have the same authority within their respective counties or boroughs to license houses for the reception of lunatics as the commissioners within their immediate jurisdiction; and that the said justices shall, at the Michaelmas general or quarter sessions in every year, appoint three or more justices, and also one physician, surgeon, or apothecary, or more, to act as visitors of every or any house or houses licensed for the reception of lunatics within the said counties or boroughs respectively; and such visitors shall at their first meeting take the oath required by this act to be taken by the commissioners, *mutatis mutandis*, such oath to be administered by a justice. The justices of the peace in general or quarter sessions in all other parts of England to license houses for the reception of lunatics, and to appoint visitors.

XVIII. That in case at any time of the death, inability, disqualification, resignation, or refusal to act of any person so appointed a visitor as aforesaid, it shall be lawful for the justices of the county or borough, (g) at any general or quarter sessions For appointment of a visitor in the place of one dying, being unable, disqualified, &c.

(e) See s. 16.

(f) See ss. 115, 31.

(g) Id.

8 & 9 Vict. c. 100.

to appoint a visitor in the room of the person who shall die, or be unable or be disqualified, or resign, or refuse to act as aforesaid.

Lists of visitors to be published by the clerk of the peace in a newspaper, and to be sent to the commissioners.

XIX. That a list of the names, places of abode, occupations, or professions of all visitors appointed as herein-before is directed shall, within fourteen days from the date of their respective appointments, be published by the clerk of the peace of the county or borough for which they shall be respectively appointed in some newspaper commonly circulated within the same county or borough, and shall, within three days from the date of their respective appointments, be sent by the clerk of the peace to the commissioners; and every clerk of the peace making default in either of the respects aforesaid shall for every such default forfeit a sum not exceeding two pounds. (*h*)

Penalty for default.

Every visitor, being a physician, surgeon, or apothecary, to be remunerated.

XX. That every such visitor as aforesaid, being a physician, surgeon, or apothecary, shall be paid out of the monies or funds herein-after mentioned for every day during which he shall be employed in executing the duties of this act such sum as the justices of the county or borough shall in general or quarter sessions direct.

Clerk to the Visitors.

Clerk of the peace, or some other person, to be appointed to be clerk to visitors;

XXI. That the clerk of the peace, or some other person to be appointed by the justices for the county or borough in general or quarter sessions, shall act as clerk to the visitors so appointed as aforesaid, and such clerk shall summon the visitors to meet at such time and place, for the purpose of executing the duties of this act, as the said justices in general or quarter sessions shall appoint; and every such appointment, summons, and meeting shall be made and held as privately as may be, and in such manner that no proprietor, superintendent, or person interested in or employed about or connected with any house to be visited shall have notice of such intended visitation; and such clerk to the visitors shall, at their first meeting, take the oath required by this act to be taken by the secretary of the commissioners, *mutatis mutandis*, such oath to be administered by one of the visitors, being a justice; and the name, place of abode, occupation, and profession of the clerk to the visitors (whether the same shall be the clerk of the peace or any other person) shall within fourteen days after the appointment be published by the clerk of the peace for the county or borough in some newspaper commonly circulated therein, and within three days from the date of the appointment be communicated by the said clerk of the peace to the commissioners; and every clerk of the peace making default in either of the respects aforesaid shall for every such default forfeit a sum not exceeding two pounds; and every such clerk to the visitors shall be allowed such salary or remuneration.

his duties and remuneration.

ration for his services (to be paid out of the monies or funds herein-after mentioned (i)) as the justices for the county or borough shall in general or quarter sessions direct. 8 & 9 Vict c. 120.

XXII. That if the clerk of any visitors shall at any time desire to employ an assistant in the execution of the duties of his office, such clerk shall certify such desire and the name of such assistant to one of the visitors, being a justice; and if such visitor shall approve thereof he shall administer the following oath to such assistant: Provision for assistants to the clerk of the visitors.

‘ I, *A. B.*, do solemnly swear, that I will faithfully keep secret all such matters and things as shall come to my knowledge in consequence of my employment as assistant to the clerk of the visitors appointed for the county [*or borough*] of _____ by virtue of an act of Parliament passed in the ninth year of the reign of her Majesty Queen Victoria, intituled [*here insert the title of the act*], unless required to divulge the same by legal authority. Oath of assistant.
So help me GOD.’

And such clerk may thereafter, at his own cost, employ such assistant.

Disqualification of Commissioners, &c.

XXIII. That no person shall be or act as a commissioner, or visitor, or secretary, or clerk to the commissioners, or clerk or assistant clerk to any visitors, or act in granting any license, who shall then be, or shall within one year then next preceding have been, directly or indirectly interested in any house licensed for the reception of lunatics, or the profits of such reception; and no physician or surgeon (being a commissioner), and no physician, surgeon, or apothecary, (being a visitor,) shall sign any certificate for the admission of any patient into any licensed house or hospital, or shall professionally attend upon any patient in any licensed house or hospital, unless he be directed to visit such patient by the person upon whose order such patient has been received into such licensed house or hospital, or by the Lord Chancellor, or her Majesty's principal Secretary of State for the time being for the Home Department, or by a committee appointed by the Lord Chancellor; and if any such commissioner, or visitor, or secretary or clerk to the commissioners, or clerk or assistant clerk to any visitors, shall after his appointment be or become so interested in any house licensed for the reception of lunatics, or the profits of such reception, such commissioner, visitor, secretary, or clerk, or assistant clerk, as the case may be, shall immediately thereupon be disqualified from acting and shall cease to act in such capacity; and if any person, being disqualified as aforesaid, shall take the office of commissioner, Persons interested in any licensed house, or being medical attendant on any patient therein, disqualified to act as commissioner, visitor, secretary, clerk, or assistant.
Disqualified persons acting a misdemeanor.

(i) See ss. 33, 36.

8 & 9 Vict. c. 100.

Physicians, &c.
contravening,
penalty 10*l*.

visitor, secretary, clerk, or assistant clerk, or, being a commissioner, visitor, secretary, clerk, or assistant clerk, shall become disqualified as aforesaid, and shall afterwards continue to act in such capacity, such person shall be guilty of a misdemeanor; and if any physician or surgeon (being a commissioner), or any physician, surgeon, or apothecary, (being a visitor), shall sign any certificate for the admission of any patient into any licensed house or hospital, or shall professionally attend any patient in any licensed house or hospital (except as aforesaid), such physician, surgeon, or apothecary (as the case may be) shall for each offence against this provision forfeit the sum of ten pounds.

Notice of Application for License.

Fourteen days
previous notice
of intended ap-
plication for and
plan of licensed
house to be
given to the
commissioners
or clerk of the
peace.

XXIV. That every person who shall desire to have a house licensed for the reception of lunatics shall give a notice, if such house be situate within the immediate jurisdiction of the commissioners, to the commissioners, and if elsewhere to the clerk of the peace for the county or borough in which such house is situate, fourteen clear days at the least prior to some quarterly or other meeting of the commissioners, or to some general or quarter sessions for such county or borough, as the case may be; and such notice shall contain the true Christian and surname, place of abode, and occupation of the person to whom the license is desired to be granted, and a true and full description of his estate or interest in such house; and in case the person to whom the license is desired to be granted does not propose to reside himself in the licensed house, the true Christian and surname and occupation of the superintendent who is to reside therein; and such notice, when given for any house which shall not have been previously licensed, shall be accompanied by a plan of such house, to be drawn upon a scale of not less than one-eighth of an inch to a foot, with a description of the situation thereof, and the length, breadth, and height of and a reference by a figure or letter to every room and apartment therein, and a statement of the quantity of land, not covered by any building, annexed to such house, and appropriated to the exclusive use, exercise, and recreation of the patients proposed to be received therein, and also a statement of the number of patients proposed to be received into such house, and whether the license so applied for is for the reception of male or female patients, or of both, and if for the reception of both, of the number of each sex proposed to be received into such house, and of the means by which the one sex may be kept distinct and apart from the other; and such notice, plan, and statement, when sent to the clerk of the peace, shall be laid by him before the justices of the county or borough at such time as they shall take into their consideration the application for such license: Provided always, that it shall be lawful for any person to whom a license shall be granted to remove the superintendent named in the notice, and at any time

or times to appoint another superintendent, upon giving a notice containing the true Christian and surname and occupation of the new superintendent to the commissioners or the visitors of the house, as the case may require: Provided always, that all plans heretofore delivered shall be deemed sufficient for the purposes of this act, if the commissioners or justices, as the case may be, shall so think fit. 8 & 9 Vict. c. 100.

XXV. That no one license shall include or extend to more than one house; but if there be any place or building detached from a house to be licensed, but not separated therefrom by ground belonging to any other person, and if such place or building be specified, delineated, and described in the notice, plan, and statement herein-before required to be given, in the same manner in all particulars as if the same had formed part of such house, then such detached place or building may be included in the license for the house, if the commissioners or justices, as the case may be, shall think fit, and if so included shall be considered part of such house for the purposes of this act: Provided always, that no person hereafter receiving a license for the first time shall receive any license for the reception of lunatics in any lunatic asylum who shall not reside on the premises for which he is licensed. No license to include more than one house; but detached buildings, in certain cases, to be considered part of the house.

XXVI. That no addition or alteration shall be made to, in, or about any licensed house, or the appurtenances, unless previous notice in writing of such proposed addition or alteration, accompanied with a plan of such addition or alteration, to be drawn upon the scale aforesaid, and to be accompanied by such description as aforesaid, shall have been given by the person to whom the license shall have been granted to the commissioners or to the clerk of the peace, as the case may be, and the consent in writing of the commissioners, or of two of the visitors, as the case may be, shall have been previously given (*k*). Notice of all additions and alterations to be given to the commissioners or clerk of the peace.

XXVII. That if any person shall wilfully give an untrue or incorrect notice, plan, statement, or description of any of the things herein-before required to be included in any notice, plan, or statement, he shall be guilty of a misdemeanor. Untrue statement a misdemeanor.

XXVIII. That in every case in which a license for the reception of lunatics shall after the passing of this act be granted by any justices the clerk of the peace for the county or borough shall, within fourteen days after such license shall have been granted, send a copy thereof to the commissioners; and any clerk of the peace omitting to send such copy within such time shall for every such omission forfeit a sum not exceeding two pounds. A copy of every license granted by justices to be sent to the commissioners.

(*k*) No penalty is annexed for the non-observance of this clause, but it is a misdemeanor wilfully to contravene the provisions of a statute; *Rex v. Sainsbury*, 4 T. R. 457; *Rex v. Davis*, Say. 133; See 1 Russ. on Crimes, 49, 3rd edition.

8 & 9 Vict. c. 100.

Every person applying for the renewal of a license to furnish a statement of the number and class of patients then detained.

XXIX. That in every case in which any person shall apply for the renewal of a license already granted or hereafter to be granted, such person, if applying to the commissioners, shall with such application transmit to the commissioners, and if applying to any justices shall with such application transmit to the clerk of the peace for the county or borough, and also at the same time to the commissioners, a statement signed by the person so applying, containing the names and number of the patients of each or either sex then detained in such house, and distinguishing whether such patients respectively are private or pauper patients; and any person who shall hereafter obtain the renewal of a license without making such return or returns shall for every such offence forfeit the sum of ten pounds; and any person who shall make any such return untrue shall be guilty of a misdemeanor.

Licenses to be made out in a given form, &c. and to be for not more than thirteen months.

XXX. That every license shall, as nearly as conveniently may be, be according to the form in the schedule (A.) annexed to this act, and shall be stamped with a ten shilling stamp, and shall be under the seal of the commissioners, if granted by them (*l*), and if by any justices under the hands and seals of three or more such justices in general or quarter sessions assembled, and shall be granted for such period, not exceeding thirteen calendar months, as the commissioners or justices, as the case may be, shall think fit.

No license without consent of recorder.

XXXI. That no license shall be granted or visitor or clerk appointed by the justices for any borough without the consent in writing of the recorder of such borough to such grant or appointment (*m*).

Charge for licenses to be granted in pursuance of this act.

XXXII. That for every license to be hereafter granted there shall be paid to the secretary of the commissioners, or to the clerk of the peace, according as the license shall be granted by the commissioners or justices (exclusive of the sum to be paid for the stamp) the sum of ten shillings and no more for every patient not being a pauper, and the sum of two shillings and sixpence and no more for every patient being a pauper (*n*), proposed to be received into such house, and if the total amount of such sums of ten shillings and two shillings and sixpence shall not amount to fifteen pounds, then so much more as shall make up the sum of fifteen pounds; and no such license shall be delivered until the sum payable for the same shall be paid: Provided always, that if the period for which a license shall be granted be less than thirteen calendar months it shall be lawful for the commissioners or the justices, as the case may be, to reduce the payment to be made on such license to any sum not less than five pounds.

Power to reduce the charge for the license in certain cases.

(*l*) See s. 7.

(*m*) See s. 115, and stat. 5 & 6 Wm. 4, c. 76, s. 105.

(*n*) See the definition of pauper, s. 114.

XXXIII. That all monies received for licenses granted by the commissioners, and for searches made in pursuance of the provision for that purpose herein-after contained (*o*), shall be retained by the secretary of the commissioners, and be applied by him in or towards the payment of the salaries and travelling and other expenses of the commissioners and of their secretary and clerks, and in or towards the payment or discharge of all or any costs, charges, and expenses incurred by or under the authority of the commissioners in the execution of or under or by virtue of this act (*p*).

8 & 9 Vict. c. 100.

Application of monies received for licenses by the secretary of the commissioners.

Account of Receipts and Payments.

XXXIV. That the secretary of the commissioners shall make out an account of all monies received and paid by him as aforesaid, and of all monies otherwise received and paid by him, and of all charges and expenses incurred under or by virtue of or in the execution of this act; and such account shall be made up to the first day of August in each year, and shall be signed by five at least of the commissioners; and such account shall specify the several heads of charge and expenditure, and shall be transmitted to the Lord High Treasurer, or to the commissioners of her Majesty's treasury, who shall thereupon audit such account, and, if he or they shall deem it expedient, direct the balance (if any) remaining in the hands of the said secretary to be paid into the Exchequer to the account of the Consolidated Fund; and such accounts shall be laid before Parliament on or before the twenty-fifth day of March in each year, if Parliament be then sitting, or if Parliament be not then sitting then within one month after the then next sitting of Parliament.

Secretary of the commissioners to make out an annual account, to be laid before the lords commissioners of the treasury, of all receipts and payments by him under this act.

XXXV. That it shall be lawful for the Lord High Treasurer, or the commissioners of her Majesty's treasury, or any three or more of them, and they are hereby directed and empowered, from time to time (on an application to them, agreed to at some quarterly or other meeting of the commissioners, attended by five at least of the commissioners, and certified under their hands), to cause to be issued and paid out of the consolidated fund to the secretary of the commissioners such a sum of money as the commissioners shall in such application have certified to be requisite to pay and discharge so much of the salaries, costs, charges, and expenses herein-before directed (*q*) to be paid out of the monies received by the said secretary for licenses and otherwise as aforesaid as such monies shall be inadequate to pay, and the said secretary shall thereupon apply such money in or towards the payment or discharge of such salaries, costs, charges, and expenses respectively; and that it shall be lawful

Balance of payments over receipts may be paid out of the consolidated fund.

(*n*) See s. 84.

(*p*) See ss. 101, 106, 109.

(*q*) See s. 33.

8 & 9 Vict. c. 100. for the Lord High Treasurer or the commissioners of her Majesty's treasury, or any three or more of them, from time to time to advance by way of imprest to the said secretary such sum or sums of money as to such Lord High Treasurer or commissioners of her Majesty's treasury may appear requisite and reasonable, for or towards the payment or discharge of all or any such salaries, costs, charges, or expenses as aforesaid, such sum or sums to be accounted for by the said secretary in his then next account.

Application of monies received for licenses by clerks of the peace.

XXXVI That all monies to be received for licenses, granted by any justices, shall be applied by the clerk of the peace for the county or borough in or towards the payment of the salary or remuneration of the clerk to the visitors for such county or borough, and in or towards the remuneration of such of the same visitors as are herein-before directed to be remunerated, and in or towards the payment or discharge of all costs, charges, and expenses incurred by or under the authority of the same justices or visitors in the execution of or under or by virtue of this act.

Clerks of the peace to make out annual accounts, to be laid before the justices in session, of all receipts and payments made under this act.

XXXVII. That the clerk of the peace for every county or borough shall keep an account of all monies received and paid by him as aforesaid, and of all monies otherwise received or paid by him under or by virtue of or in the execution of this act; and such account shall respectively be made up to the first day of August in each year, and shall be signed by two at least of the visitors for the county or borough; and every such account shall be laid by the clerk of the peace before the justices at the Michaelmas general or quarter sessions, who shall thereupon direct the balance (if any) remaining in the hands of the clerk of the peace to be paid into the hands of the treasurer for such county or borough, in aid and as part of the county or borough rate.

Payment of Expenses.

Balance of payments over receipts may be paid out of the funds of the county or borough.

XXXVIII. That it shall be lawful for the justices for any county or borough in general or quarter sessions assembled, if they shall think fit (*r*), to order to be paid to the clerk of the peace of such county or borough, out of the rates or funds thereof, such sum or sums of money as they shall on examination deem to be necessary to pay and discharge so much of the salary, remuneration, costs, charges, and expenses herein-before directed to be paid out of the monies received by such clerk of the peace for licenses and otherwise as aforesaid as such monies shall be inadequate to pay; and also that it shall be lawful for the justices in general or quarter sessions assembled, if they shall think fit, from time to time to order to be advanced out of the rates or funds of such county or borough, to the clerk of the

peace, such sum or sums of money as to such justices may appear requisite and reasonable, for or towards the payment or discharge of any such salary, remuneration, costs, charges, or expenses as last aforesaid; and every such sum of money as aforesaid shall be paid and advanced out of the rates or funds of such county or borough by the treasurer thereof, and shall be allowed in his accounts, on the authority of the aforesaid order by the justices for the payment or advance thereof.

8 & 9 Vict. c. 100.

Death or Incapacity of Persons Licensed.

XXXIX. That if any person to whom a license shall have been granted under this act or under any of the acts hereinbefore repealed shall by sickness or other sufficient reason become incapable of keeping the licensed house, or shall die before the expiration of the license, it shall be lawful for the commissioners or for any three justices for the county or borough, as the case may be, if they shall respectively think fit, by writing endorsed on such license, under the seal of the commissioners or under the hands of such three justices, to transfer the said license, with all the privileges and obligations annexed thereto, for the term then unexpired, to such person as shall at the time of such incapacity or death be the superintendent of such house, or have the care of the patients therein, or to such other person as the commissioners or such justices respectively shall approve, and in the meantime such license shall remain in force and have the same effect as if granted to the superintendent of the house; and in case a license has been or shall be granted to two or more persons, and before the expiration thereof any or either of such persons shall die, leaving the other or others surviving, such license shall remain in force and have the same effect as if granted to such survivors or survivor.

Provisions in case of the incapacity or death of the person licensed.

New License on Change of House.

XL. That if any licensed house shall be pulled down or occupied under the provisions of any act of Parliament, or shall by fire, tempest, or other accident be rendered unfit for the accommodation of lunatics, or if the person keeping such house shall desire to transfer the patients to another house, it shall be lawful for the commissioners (if the new house shall be within their immediate jurisdiction), at any quarterly or other meeting, or for any two or more of the visiting justices for the county or borough within which the new house is situate, as the case may be, upon the payment to the secretary of the commissioners or the clerk of the peace, as the case may be, of not less than one pound for the license (exclusive of the sum to be paid for the stamp), to grant to the person whose house has been so pulled down, occupied, or so rendered unfit, or who shall desire to transfer his patients as aforesaid, a license to keep such other house for the reception of lunatics, for such time as the com-

In case of a licensed house being taken for public purposes, or accidentally rendered unfit, or of the keeper wishing to transfer his patients to a new house.

8 & 9 Vict. c. 100.

missioners or the said justices, as the case may be, shall think fit: Provided always, that the same notice of such intended change of house, and the same plans and statements and descriptions of and as to such intended new house, shall be given as are required when application is first made for a license for any house, and shall be accompanied by a statement in writing of the cause of such change of house; and that, except in cases in which the change of house is occasioned by fire or tempest, seven clear days previous notice of the intended removal shall be sent, by the person to whom the license for keeping the original house shall have been granted, to the person who signed the order for the reception of each patient, not being a pauper, or the person by whom the last payment on account of such patient shall have been made, and to the relieving officer or overseer of the union or parish to which each patient being a pauper is chargeable, or the person by whom the last payment on account of such patient shall have been made.

Revocation and Prohibition of Licenses.

Power of revocation of licenses granted by justices.

XLI. That if a majority of the justices of any county or borough in general or quarter sessions assembled shall recommend to the Lord Chancellor that any license granted by the justices for such county or borough, either before or after the passing of this act, shall be revoked, it shall be lawful for the Lord Chancellor to revoke the same by an instrument under his hand and seal, such revocation to take effect at a period to be named in such instrument, not exceeding two calendar months from the time a copy or notice thereof shall have been published in the "*London Gazette*," and a copy or notice of such instrument of revocation shall be published in the "*London Gazette*," and shall before such publication be transmitted to the person to whom such license shall have been granted, or to the resident superintendent of the licensed house, or be left at the licensed house: Provided always, that in case of any such revocation being recommended to the Lord Chancellor, notice thereof in writing shall, seven clear days previously to the transmission of such recommendation to the Lord Chancellor, be given to the person the revocation of whose license shall be recommended, or to the resident superintendent of the licensed house, or shall be left at the licensed house.

Power of revocation and of prohibition of renewal of licenses granted by the commissioners or by justices.

XLII. That if the commissioners shall recommend to the Lord Chancellor that any license granted either by the commissioners or by any justices, either before or after the passing of this act, shall be revoked or shall not be renewed, it shall be lawful for the Lord Chancellor by an instrument under his hand and seal to revoke or prohibit the renewal of such license: and in the case of a revocation the same shall take effect at a period to be named in such instrument, not exceeding two calendar months from the time a copy or notice thereof shall have been published

in the "*London Gazette*;" and a copy or notice of such instrument of revocation shall be published in the "*London Gazette*," and shall before such publication be transmitted to the person to whom such license shall have been granted, or to the resident superintendent of the licensed house, or shall be left at the licensed house: Provided always, that in case of any such revocation or prohibition to renew being recommended to the Lord Chancellor, notice thereof in writing shall, seven clear days previously to the transmission of such recommendation to the Lord Chancellor, be given to the person the revocation or prohibition of renewal of whose license shall be recommended, or to the resident superintendent of the licensed house, or shall be left at the licensed house.

8 & 9 Vict. c. 100.

XLIII. That the regulations as to the lunatics of every hospital in which lunatics are or shall be received shall be printed, and complete copies thereof shall be sent to the commissioners, and also kept hung up in the visitors room of such hospital; and that every such hospital shall have a physician, surgeon, or apothecary resident therein, as the superintendent and medical attendant thereof; and such superintendent shall immediately after the passing of this act (or immediately after the establishment of such hospital, as the case may be,) apply to the commissioners to have such hospital registered, and thereupon such hospital shall be registered in a book to be kept for that purpose by the commissioners; and in case the superintendent of any such hospital shall at any time omit to have copies of such regulations sent or hung up as aforesaid, or to apply to have such hospital registered as aforesaid, he shall for every such omission forfeit a sum not exceeding twenty pounds.

Hospitals receiving lunatics to have their regulations printed, and a resident medical attendant, and to be registered.

XLIV. That after the passing of this act it shall not be lawful for any person to receive two or more lunatics into any house, unless such house shall be an asylum or an hospital registered under this act, or a house for the time being duly licensed under this act, or one of the acts hereinbefore repealed; and any person who shall receive two or more lunatics into any house other than a house for the time being duly licensed as aforesaid, or an asylum or an hospital duly registered under this act, shall be guilty of a misdemeanor.

No house to be kept for the reception of two or more lunatics without a license.

Admission of Lunatics.

XLV. That no person (not a pauper), whether being or represented to be a lunatic, or only a boarder or lodger, in respect of whom any money shall be received or agreed to be received for board, lodging, or any other accommodation, shall be received into or detained in any licensed house, and no person (not a pauper) shall be received into or detained as a lunatic into any hospital, without an order under the hand of some person according to the form and stating the particulars required in schedule (B.) annexed to this act, nor without the

No person (not a pauper) to be received without an order and medical certificate

8 & 9 Vict. c. 100. medical certificates, according to the form in schedule (C.) annexed to this act, of two physicians, surgeons, or apothecaries who shall not be in partnership, and each of whom shall separately from the other have personally examined the person to whom it relates, not more than seven clear days previously to the reception of such person into such house or hospital, and shall have signed and dated the same on the day on which such person shall have been so examined; and every person who shall receive or detain any such person as aforesaid in any such house or hospital as aforesaid without such order and medical certificates as aforesaid, and any physician, surgeon, or apothecary who shall knowingly (*v*) sign any such medical certificate as aforesaid which shall untruly state any of the particulars required by this act, shall be guilty of a misdemeanor.

Medical practitioner signing such certificate to specify facts upon which opinion formed.

XLVI. Provided always, and be it enacted, that every physician, surgeon, or apothecary signing such certificate shall specify therein any fact or facts (whether arising from his own observation or from the information of any other person) upon which he has formed his opinion that the person to whom such certificate relates is a lunatic or an insane person, or an idiot, or a person of unsound mind (*w*).

Proviso that in certain cases a person may be received on a certificate signed by one medical practitioner only.

XLVII. Provided always, nevertheless, and be it enacted, that any person (not a pauper) may, under special circumstances, be received into any such house or hospital as aforesaid, upon such order as aforesaid, with the certificate of one physician, surgeon, or apothecary alone, provided such order state the

(*v*) The corresponding section in statutes 9 Geo. 4, c. 41, s. 30, and 2 & 3 Wm. 4, c. 107, s. 28, contained the words "with an intention to deceive," after knowingly. It was decided that signing a certificate of insanity, without having visited and examined the party to whom it related, alone constituted an offence within the 30th section of the statute 9 Geo. 4, c. 41; and it was not necessary to show that there was any intention to deceive. Thus, where an indictment was preferred against a medical practitioner for a misdemeanor—in having "*knowingly, and with an intention to deceive,*" signed a certificate, upon which an order had been given for the confinement of a person in a house kept for the reception of insane persons, without having visited and personally examined the individual, contrary to the provisions of the act 9 Geo. 4, c. 41—at the trial it appeared that the defendant had not himself seen the patient for a considerable time before the certificate was signed, but that his partner visited and examined her, and thereupon signed a certificate containing the various statements required by the act, and sent it to the defendant, who added his signature. The jury negatived any intention to deceive, but found the defendant guilty, subject to the opinion of the Court, upon a special case, as to the validity of the indictment.—It was held, that the averment of intention was surplusage, and that such unnecessary matter might be rejected, as well in an indictment on a penal statute as at common law. The defendant was afterwards sentenced by the Court to pay a fine of 20*l.* to the king, and to be imprisoned until it was paid. *Rex v. Jones*, 2 B & Ad. 611.

(*w*) It seems that medical certificates under this section must state specific facts upon which the opinion of the insanity of the person confined under them is founded, and a statement that the alleged lunatic has a general suspicion of the motives of every person, and makes ungrounded statements, is not sufficient. *In re Fell*, Law, J., 1846, M. C. 25; 3 Dowl. & L. 373, *ante*, p. 652.

special circumstances which have prevented the person from being examined by two medical practitioners; but in every such case another such certificate shall be signed by some other physician, surgeon, or apothecary, not being connected with any such house or hospital, who shall have especially examined such person within three days after his reception into such house or hospital; and every person who, having received any person into any house or hospital as aforesaid upon the certificate of one medical practitioner alone, as aforesaid, shall keep or permit such person to remain in such house or hospital beyond the said period of three days without such further certificate as aforesaid, shall be guilty of a misdemeanor.

8 & 9 Vict. c. 100.

XLVIII. That no pauper shall be received into or detained in any licensed house, or any hospital, without an order and statement according to the form and stating the particulars required in schedule (D.) annexed to this act, under the hands of one justice or an officiating clergyman, with the relieving officer or one of the overseers of the union or parish from which such pauper shall be sent, (which said justice or which said clergyman and relieving officer or overseer, as the case may be, shall have personally examined such pauper previously to signing such order,) nor without a medical certificate according to the form in the said schedule (D.) annexed to this act, and dated not more than seven clear days previously to the reception of such pauper into such house or hospital; and every such certificate shall be signed by a physician, surgeon, or apothecary (not being the medical officer of such parish or union) on the day whereon he shall examine such pauper; and every person who shall receive any pauper into any such house or hospital as aforesaid without such order and medical certificate as last aforesaid shall be guilty of a misdemeanor.

No pauper to be received into any house or hospital for lunatics without a certain order and certificate.

XLIX. That no physician, surgeon, or apothecary who, or whose, father, brother, son, or partner, is wholly or partly the proprietor of or a regular professional attendant in a licensed house or an hospital, shall sign any certificate for the reception of a patient into such house or hospital; and no physician, surgeon, or apothecary who, or whose father, brother, son, or partner, shall sign the order herein-before required for the reception of a patient, shall sign any certificate for the reception of the same patient; and any physician, surgeon, or apothecary who shall sign any certificate contrary to any of the provisions herein-before contained, or without having complied with all the provisions hereby required in the case of the patient to whom the same shall relate, or who shall in such certificate describe his medical qualification untruly, or shall untruly state any thing therein, shall be guilty of a misdemeanor.

No medical practitioner who is interested in or attends a licensed house or hospital to sign a certificate for admission of a patient into such place.

8 & 9 Vict. c. 100.

Entries and Notices.

Every person receiving a person as a lunatic into any house or hospital to make an entry thereof in a certain form.

L. That every proprietor or superintendent who shall receive any patient into any licensed house or any hospital shall, within two days after the reception of such patient, make an entry with respect to such patient in a book to be kept for that purpose to be called "The Book of Admissions," according to the form and containing the particulars required in schedule (E.) annexed to this act, so far as he can ascertain the same, except as to the form of the mental disorder, and except also as to the discharge or death of the patient, which shall be made when the same shall happen; and every person who shall so receive any such patient, and shall not within two days thereafter make such entry as aforesaid (except as aforesaid), shall forfeit a sum not exceeding two pounds; and every person who shall knowingly and willingly in any such entry untruly set forth any of the particulars shall be guilty of a misdemeanor.

Form of patient's disorder to be entered in "The Book of Admissions" by the medical attendant.

LI. That the form of the mental disorder of every patient received into any licensed house or any hospital shall within seven days after his reception be entered in the said book of admissions by the medical attendant of such house or hospital; and every such medical attendant who shall omit to make any such entry within the time aforesaid shall for every such offence forfeit a sum not exceeding two pounds.

Every person receiving a patient into any house or hospital to transmit a notice thereof to the commissioners, and if within the jurisdiction of any visitors, then also to the clerk of such visitors.

LII. That the proprietor or resident superintendent of every licensed house (whether licensed by the commissioners or by any justices), and the superintendent of every hospital, shall after two clear days, and before the expiration of seven clear days from the day on which any patient shall have been received into such house or hospital, transmit a copy of the order and medical certificates or certificate on which such person shall have been received, and also a notice and statement according to the form in schedule (F.) annexed to this act, to the commissioners; and the proprietor or resident superintendent of every house licensed within the jurisdiction of any visitors shall also within the same period transmit another copy of such order and certificates or certificate, and a duplicate of such notice and statement, to the clerk of the visitors; and every proprietor or superintendent of any such house or hospital who shall neglect to transmit such copy, notice, or statement to the commissioners, or (where the same is required) to the clerk of the visitors, shall be guilty of a misdemeanor.

Notices to be given in case of the escape of any patient, and of his being brought back.

LIII. That whenever any patient shall escape from any licensed house or any registered hospital the proprietor or superintendent of such house or hospital shall within two clear days next after such escape transmit a written notice thereof to the commissioners, and if such house be within the jurisdiction of any visitors then also to the clerk of such visitors; and such notice shall state the Christian and surname of the patient who

has so escaped, and his then state of mind, and also the circumstances connected with such escape; and if such patient shall be brought back to such house or hospital such proprietor or resident superintendent shall, within two clear days next after such person shall be so brought back transmit a written notice thereof to the commissioners, and also, if such house be within the jurisdiction of any visitors, to the clerk of such visitors; and such notice shall state when such person was so brought back, and the circumstances connected therewith, and whether with or without a fresh order and certificates or certificate; and every proprietor or resident superintendent omitting to transmit such notice, whether of escape or of return, shall for every such omission forfeit a sum not exceeding ten pounds.

8 & 9 Vict. c. 100.

LIV. That whenever any patient shall be removed or discharged from any licensed house or any hospital, or shall die therein, the proprietor or superintendent of such house or hospital shall, within two clear days next after such removal, discharge, or death, make an entry thereof in a book to be kept for that purpose according to the form and stating the particulars in schedule (G. 1,) annexed to this act, and shall also within the same two days transmit a written notice thereof, and also of the cause of his death, to the commissioners, and also, if such house shall be within the jurisdiction of any visitors, to the clerk of such visitors, according to the form and containing the particulars in schedule (G. 2,) annexed to this act; and every proprietor or superintendent of any such house or hospital who shall neglect to make such entry or transmit such notice or notices, or shall therein set forth any thing untruly, shall be guilty of a misdemeanor.

Entry to be made, and notice given, in case of the death, discharge, or removal of any patient.

LV. That in case of the death of any patient in any licensed house or any hospital, a statement of the cause of the death of such patient, with the name of any person present at the death, shall be drawn up and signed by the medical attendant of such house or hospital, and a copy thereof, duly certified by the proprietor or superintendent of such house or hospital, shall by him be transmitted to the commissioners, and also to the person signing the order for such patient's confinement, and to the registrar of deaths for the district, and if such house be within the jurisdiction of any visitors, then also to the clerk of such visitors, within forty-eight hours after the death of such patient; and every medical attendant, proprietor, or superintendent who shall neglect or omit to draw up, sign, certify, or transmit such statement as aforesaid shall for every such neglect or omission forfeit and pay a sum not exceeding fifty pounds.

In case of the death of a patient, a statement of the cause of death to be transmitted to the commissioners, and, if within the jurisdiction of any visitors, to the clerk of the visitors also.

LVI. That if any superintendent, officer, nurse, attendant, servant, or other person employed in any licensed house or registered hospital shall in any way abuse or ill-treat any patient confined therein, or shall wilfully neglect any such patient, he shall be deemed guilty of a misdemeanor; and that in the event

Abuse or ill-treatment or (in certain cases) neglect of a patient to be a misdemeanor.

8 & 9 Vict. c. 100

of the release of any person from confinement in any asylum or private house who shall consider himself to have been unjustly confined, a copy of the certificates and order upon which he has been confined shall at his request be furnished to him or to his attorney by the clerk to the commissioners, without any fee or reward for the same; and it shall be lawful for the Home Secretary, on the report of the commissioners or visitors of any asylums, to direct her Majesty's Attorney General to prosecute on the part of the Crown any person who shall have been concerned in the unlawful taking or confinement of any of her Majesty's subjects as an insane patient, and likewise any person who shall have been concerned in the neglect or ill-treatment of any patient or person so confined.

Medical Attendant of Houses.

Houses having 100 patients to have a resident medical attendant, and houses having less to be visited by a medical attendant.

LVII. That in every house licensed for one hundred patients or more there shall be a physician, surgeon, or apothecary resident as the superintendent or medical attendant thereof; and that every house licensed for less than one hundred and more than fifty patients (in case such house shall not be kept by or have a resident physician, surgeon, or apothecary), shall be visited daily by a physician, surgeon, or apothecary; and that every house licensed for less than fifty patients (in case such house shall not be kept by or have a resident physician, surgeon, or apothecary), shall be visited twice in every week by a physician, surgeon, or apothecary: Provided always, that it shall be lawful for the visitors of any licensed house to direct that such house, and for the commissioners to direct that any licensed house, shall be visited by a physician, surgeon, or apothecary at any other time or times, not being oftener than once in every day.

The commissioners and visitors, in houses licensed or less than 11 persons, may lessen the number of medical visits.

LVIII. Provided always, and be it enacted, that when any house is licensed to receive less than eleven lunatics it shall be lawful for any two of the commissioners or any two of the visitors of such house, if they shall respectively so think fit, by any writing under their hands, to permit that such house shall be visited by a physician, surgeon, or apothecary, at such intervals more distant than twice in every week as such commissioners or visitors shall appoint, but not at a greater interval than once in every two weeks.

A book to be kept, to be called "The Medical Visitation Book," in which a weekly entry is to be made, showing the condition of the house and of the patients.

LIX. That every physician, surgeon, or apothecary, where there shall be only one, keeping or residing in or visiting any licensed house or any hospital, and where there shall be two or more physicians, surgeons, or apothecaries, keeping or residing in or visiting any licensed house or any hospital, then one at least of such physicians, surgeons, or apothecaries, shall once in every week (or, in the case of any house at which visits at more distant intervals than once in a week are permitted, on every visit), enter and sign in a book to be kept at such house or hospital for that purpose, to be called "the Medical Visitation

Book," a report, showing the date thereof, and also the number, 8 & 9 Vict. c. 100.
sex, and state of health of all the patients then in such house or hospital, the Christian and surname of every patient who shall have been under restraint, or in seclusion, or under medical treatment, since the date of the last preceding report, the condition of the house or hospital, and every death, injury, and act of violence which shall have happened to or affected any patient since the then last preceding report, according to the form in schedule (H.) annexed to this act; and every such physician, surgeon, or apothecary, who shall omit to enter or sign such report as aforesaid, shall for every such omission forfeit and pay the sum of twenty pounds; and every such physician, surgeon, or apothecary, who shall in any such report as aforesaid enter any thing untruly shall be guilty of a misdemeanor.

LX. That there shall be kept in every licensed house and in every hospital a book to be called "The Case Book," in which A medical case book to be kept. the physician, surgeon, or apothecary keeping or residing in or visiting such house or hospital shall from time to time make entries of the mental state and bodily condition of each patient, together with a correct description of the medicine and other remedies prescribed for the treatment of his disorder; and that it shall be lawful for the commissioners from time to time, by any order under their common seal, to direct the form in which such case book shall be kept by such physician, surgeon, or apothecary; and immediately after a copy of such order shall have been transmitted by the secretary of the commissioners to such physician, surgeon, or apothecary, such physician, surgeon, or apothecary shall thereupon keep such case book in the form which shall be directed by such order; and that it shall be lawful for the commissioners (whenever they shall see fit) to require, by an order in writing under their common seal, such physician, surgeon, or apothecary to transmit to the commissioners a correct copy of the entries or entry in any case book kept under the provisions of this act, relative to the case of any lunatic who is or may have been confined in any such licensed house or hospital; and every such physician, surgeon, or apothecary who shall neglect to keep the said case book, or to keep the same according to the form directed by the commissioners, or to transmit a copy of the said entry or entries, pursuant to such order or orders as aforesaid, shall for every such neglect forfeit any sum not exceeding ten pounds (a).

(a) Order of Commissioners in Lunacy as to the Case Book.

The commissioners in lunacy, by virtue of the power vested in them by the act of Parliament passed in the session holden in the 8th and 9th years of the reign of her present Majesty, intituled "An Act for the Regulation of the Care and Treatment of Lunatics," do hereby order and direct,

That the medical "case book," by the said act directed to be kept in every licensed house and hospital, shall be kept in the form or manner hereinafter

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All licensed
houses and hos-
pitals to be
visited by the
commissioners.

LXI. That every licensed house shall, without any previous notice, be visited by two at least of the commissioners (one of whom shall be a physician or surgeon, and the other a barrister), four times at the least in every year, if such house shall be within the immediate jurisdiction of the commissioners, and if not, twice at least in every year; and every hospital in which lunatics shall be received shall, without any previous notice, be visited by two at least of the said commissioners (one of whom shall be a physician or surgeon, and the other a barrister), once at least in every year; and every such visit shall be made on

mentioned, and shall contain the following particulars, (to be amplified in cases which appear to call for more extended details), viz. :—

First—A statement of the name, age, sex, and previous occupation of the patient, and whether he is married or single.

Secondly—An accurate description of the external appearance of the patient, when first seen after admission; of his habit of body, and temperament; of the appearance of his eyes, the expression of his countenance, and any peculiarity in the form of his head; of the physical state of the vascular and respiratory organs, and of the abdominal viscera, and their respective functions; of the state of the pulse, tongue, skin, &c.

Thirdly—A description of the phenomena of mental disorder which characterize the case; the manner and period of the attack; with a minute account of the symptoms, and the changes produced in the patient's temper or disposition; specifying whether the malady displays itself by any, and what, illusions, or by irrational conduct, or morbid or dangerous habits or propensities; whether it has occasioned any failure of memory or understanding; or is connected with epilepsy, hemiplegia, or symptoms of general paralysis, such as tremulous movements of the tongue, defect of articulation, or weakness or unsteadiness of gait.

Fourthly—Every particular which can be obtained respecting the previous history of the patient:—what are believed to have been the predisposing and exciting causes of the attack; what have been his habits, whether active or sedentary, temperate or otherwise; whether he has experienced any former attacks; and, if so, at what periods; whether any of his relatives have been subject to insanity, or any other cerebral disorder; and whether his present attack has been preceded by any premonitory symptoms, such as restlessness, unusual elevation or depression of spirits, or any remarkable deviation from his ordinary habits and conduct; and whether he has undergone any, and what, previous treatment, or has been subjected to personal restraint.

Fifthly—A statement, from time to time, of the mental and bodily condition of the patient, and of any changes which may be observed in his bodily health, or in the form of his mental disease; also an accurate record of the medicines administered, and other remedies employed, with the results.

That the several particulars, hereinbefore required to be recorded, be set forth, not in any fixed or tabular form, but in a manner so clear and distinct, that they may admit of being easily referred to, and extracted, whenever the commissioners shall so require.

And that a copy of this order be inserted at the commencement of the case book.

Dated this ninth day of January, one thousand eight hundred and forty-six.

L. S.

such day or days, and at such hours of the day, and for such length of time, as the visiting commissioners shall think fit, and also at such other times (if any) as the said commissioners in lunacy shall direct; and such visiting commissioners, when visiting such house or hospital, may and shall inspect every part of such house or hospital, and every outhouse, place, and building communicating with such house or hospital, or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined in such house or hospital, and inquire whether any patient is under restraint, and why, and inspect the order and certificates or certificate for the reception of every patient who shall have been received into such house or hospital since the last visit of the commissioners, and in the case of any house licensed by justices shall consider the observations made in the visitors book for such house by the visitors appointed by the justices, and enter in the visitors book of such house or hospital a minute of the then condition of the house or hospital, and of the patients therein, and the number of patients under restraint, with the reasons thereof, as stated, and such irregularity (if any) as may exist in any such order or certificates as aforesaid, and also whether the previous suggestions (if any) of the visiting commissioners or visitors have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise, and also, if such visit be the first after the granting a license to the house, shall examine such license, and, if the same be in conformity with the provisions of this act, sign the same; but if it be informal enter in such visitors book in what respect such license is informal: Provided also, that it shall be lawful for the Lord Chancellor, on a representation by the commissioners setting forth the expediency of such alteration, by any writing under his hand, to direct that any house licensed by justices shall (during such period as he shall therein specify, or until such his direction shall be revoked), be visited by the commissioners once only in the year, and also to direct that any house licensed by the commissioners, and not receiving any pauper patients therein, shall (during such period as he shall therein specify, or until such his direction shall be revoked), be visited by the commissioners twice only in the year.

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LXII. That every licensed house within the jurisdiction of any visitors appointed by justices shall be visited by two at least of the said visitors (one of whom shall be a physician, surgeon, or apothecary,) four times at the least in every year, on such days, and at such hours in the day, and for such length of time as the said visitors shall think fit, and also at such other times (if any) as the justices by whom such house shall have been licensed shall direct; and such visitors when visiting any such house

Licensed houses not within the immediate jurisdiction of the commissioners to be inspected four times a year at least by the visitors.

8 & 9 Vict. c. 100.

may and shall inspect every part of such house, and every house, outhouse, place, and building communicating therewith, or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined therein, and inquire whether any patient is under restraint, and why, and inspect the order and certificates or certificate for the reception of every patient who shall have been received into such house since the last visit of the visitors, and enter in the visitors book a minute of the then condition of the house, of the patients therein, and the number of patients under restraint, with reasons thereof as stated, and such irregularity (if any) as may exist in any such order or certificates as aforesaid, and also whether the previous suggestions (if any) of the visitors or visiting commissioners have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise.

The proprietor or superintendent of every house and hospital to show every part and every patient to the visiting commissioners and visitors.

LXIII. That the proprietor or superintendent of every licensed house or hospital shall show to the commissioners and visitors respectively visiting the same every part thereof respectively, and every person detained therein as a lunatic; and every proprietor or superintendent of any licensed house or any hospital who shall conceal or attempt to conceal, or shall refuse or wilfully neglect to show, any part of such house or hospital, or any house, outhouse, place, or building communicating therewith, or detached therefrom, but not separated as aforesaid, or any part of the ground or appurtenances held, used, or occupied therewith, or any person detained or being therein, from any visiting commissioners or visitors, or from any person authorized under any power or provision of this act to visit and inspect such house or hospital, or the patients confined therein or any of them, shall be guilty of a misdemeanor.

Inquiries to be made by the commissioners and visitors on their several visitations.

LXIV. That the visiting commissioners and visitors respectively, upon their several visitations to every licensed house and to every hospital, shall inquire when divine service is performed, and to what number of the patients, and the effect thereof; and also what occupations or amusements are provided for the patients, and the result thereof; and whether there has been adopted any system of non-coercion, and, if so, the result thereof; and also as to the classification of patients; and also as to the condition of the pauper patients (if any) when first received; and also as to the dietary of the pauper patients (if any); and shall also make such other inquiries as to such visiting commissioners or visitors shall seem expedient; and every proprietor or superintendent of a licensed house or an hospital who shall not give full and true answers to the best of his knowledge to all questions which the visiting commissioners and visitors respectively shall ask in reference to the matters aforesaid shall be guilty of a misdemeanor.

LXV. That upon every visit of the visiting commissioners to any licensed house or to any hospital, and upon every visit of the visitors to any licensed house, there shall be laid before such visiting commissioners or visitors (as the case may be), by the proprietor or superintendent of such licensed house or of such hospital, a list of all the patients then in such house or hospital (distinguishing pauper patients from other patients, and males from females, and specifying such as are deemed curable), and also the several books by this act required to be kept by the proprietor or superintendent and by the medical attendant of a licensed house or an hospital, and also all orders and certificates relating to patients admitted since the last visitation of the commissioners or visitors (as the case may be), and also, in the case of a licensed house, the license then in force for such house, and also all such other orders, certificates, documents, and papers relating to any of the patients at any time received into such licensed house or hospital as the visiting commissioners or visitors shall from time to time require to be produced to them ; and the said visiting commissioners or visitors, as the case may be, shall sign the said books as having been produced to them.

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Books and documents to be produced to visiting commissioners and visitors.

LXVI. That there shall be hung up in some conspicuous part of every licensed house a copy of the plan given to the commissioners or justices on applying for the license for such house ; and that there shall be kept in every licensed house and in every hospital in which lunatics shall be received a Queen's printer's copy of this act, bound up in a book to be called "The Visitors Book," and that the said visiting commissioners and visitors respectively shall at the time of their respective visitations enter therein the result of the inspections and inquiries herein-before directed or authorized to be made by them respectively, with such observations (if any) as they shall think proper ; and that there shall also be kept in every such house and hospital a book to be called "The Patients Book," and that the said visiting commissioners and visitors respectively shall at the time of their respective visitations enter therein such observations as they may think fit respecting the state of mind or body of any patient in such house or hospital.

A book to be kept called "The Visitors Book," for the result of inspection and inquiries ;

and a book called "The Patients Book," for observations as to state of patients.

LXVII. That the proprietor or resident superintendent of every licensed house and of every hospital shall, within three days after every such visit by the visiting commissioners as aforesaid, transmit a true and perfect copy of the entries made by them in "The Visitors Book," "The Patients Book," and "The Medical Visitation Book" respectively (distinguishing the entries in the several books) to the commissioners, and shall within three days after every such visitation by the visitors, transmit a true and perfect copy of the entries made by them as aforesaid (distinguishing as aforesaid) to the commissioners and also to the clerk of the visitors ; and the copies so transmitted

Proprietor or resident superintendent to transmit all entries by visitors and visiting commissioners to the clerk of the visitors and to the commissioners.

8 & 9 Vict. c. 100.

to the clerk of the visitors of all such entries relating to any licensed house, and made since the grant or last renewal of the license thereof, shall be laid before the justices on taking into consideration the renewal of the license to the house to which such entries shall relate ; and every such proprietor or superintendent as aforesaid who shall omit to transmit, as herein-before directed, a true and perfect copy of every or any such entry as aforesaid, shall for every such omission forfeit a sum not exceeding ten pounds.

Entries to be made by Visitors.

Commissioners visiting a house licensed by justices to make an entry in the patients book as to the state of mind of any doubtful patient, and the same to be sent to the clerk of the visitors, who are thereupon to visit such patient.

LXVIII. That the commissioners visiting any house licensed by justices shall carefully consider and give special attention to the state of mind of any patient therein confined, as to the propriety of whose detention they shall doubt (or as to whose sanity their attention shall be specially called), and shall, if they shall think that the state of mind of such patient is doubtful, and that the propriety of his detention requires further consideration, make and sign a minute thereof in the patients book of such house ; and a true and perfect copy of every such minute shall, within two clear days after the same shall have been made, be sent by the proprietor or superintendent of such house to the clerk of the visitors of such house, and such clerk shall forthwith communicate the same to the said visitors, or some two of them, (of whom a physician, surgeon, or apothecary shall be one), and such visitors shall thereupon immediately visit such patient, and act as they shall see fit ; and every such proprietor or superintendent who shall omit to send a true and perfect copy, as herein-before directed, of every or any such last-mentioned minute, and every clerk who shall neglect to communicate the same to two of the visitors as aforesaid, shall be guilty of a misdemeanor.

Visiting commissioners to report on every house and hospital not within their immediate jurisdiction.

LXIX. That the visiting commissioners shall, after every visitation by them to every licensed house not being within their immediate jurisdiction, and to every hospital, report in writing the general result of their inspection thereof (together with such special circumstances, if any, as they may deem proper to notice) to the commissioners, and the secretary of the commissioners shall thereupon enter the same in a book to be kept for that purpose.

Power for the commissioners or any five of them to make rules.

LXX. That it shall be lawful for the commissioners or any five of them, at any quarterly or special meeting, by any resolution or resolutions under their common seal, or to be entered in a book to be kept for that purpose, and signed by five at least of the commissioners present at such meeting, from time to time to make such orders and rules as they shall think fit for regulating the duties of the commissioners or any of them, or of their secretary, clerks, and servants, or for the due or better performance of the business of the commission : provided never-

theless, that the secretary of the commissioners shall give to every commissioner, so far as circumstances will admit, not less than seven days notice of every such special meeting, and shall in the summons for such special meeting state the purposes for which the same is intended to be held.

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LXXI. That it shall be lawful for any two or more of the commissioners, or any two visitors, to visit and to inspect any licensed house or hospital at such hour of the night as they shall think fit: provided nevertheless, that no such visitor shall make any such visitation or inspection except of a licensed house within their jurisdiction.

Power in certain cases to visit by night.

Discharge of Patients.

LXXII. That if and when any person who signed the order on which any patient (not being a pauper) was received into any licensed house or into any hospital shall by writing under his hand direct that such patient shall be discharged or removed, then and in such case such patient shall forthwith be discharged or removed, as the person who signed the order for his reception shall direct.

The person who signed the order for the reception of a private patient may order his discharge or removal.

LXXIII. That if the person who signed the order on which any patient (not being a pauper) was received into any licensed house or into any hospital be incapable by reason of insanity or absence from England, or otherwise, of giving an order for the discharge or removal of such patient, or if such person be dead, then and in any of such cases the husband or wife of such patient, or if there be no such husband or wife, the father of such patient, or if there be no father, the mother of such patient, or if there be no mother, then any one of the nearest of kin for the time being of such patient, or the person who made the last payment on account of such patient, may by any writing under his or her hand give such direction as aforesaid for the discharge or removal of such patient, and thereupon such patient shall be forthwith discharged or removed as the person giving such direction shall direct.

Provision for the discharge of a private patient when the person who signed the order for his reception is incapable.

LXXIV. That the guardians of any parish or union may by a minute of their board, or an officiating clergyman of any parish not under a board of guardians, and one of the overseers thereof, or any two justices of the county or borough in which such last-mentioned parish is situate, may by writing under the hands respectively of such clergyman and overseer or of such justices direct that any pauper patient belonging to such parish or union, and detained in any licensed house or any hospital, shall be discharged or removed therefrom, and may direct the mode of such discharge or removal; and if a copy of such minute or such writing be produced to the proprietor or superintendent of such licensed house or such hospital, he shall forthwith discharge or remove such patient, or cause or suffer such patient to be discharged or removed accordingly.

Mode of removal or discharge of pauper patients.

8 & 9 Vict. c. 100.

No patient to be removed under any of the preceding powers, if certified to be dangerous, unless the commissioners or visitors consent, or for the purpose of transfer to some other asylum.

Commissioners may discharge any patient confined in a house licensed by themselves.

Two commissioners may make special visits to discharge any patient confined in a house licensed by justices or in an hospital.

Similar powers for two visitors as to houses within their jurisdiction.

LXXV. Provided always, nevertheless, and be it enacted, That no patient shall be discharged or removed, under any of the powers herein-before contained, from any licensed house or any hospital, if the physician, surgeon, or apothecary by whom the same shall be kept, or who shall be the regular medical attendant thereof, shall by writing under his hand certify that in his opinion such patient is dangerous and unfit to be at large, together with the grounds on which such opinion is founded, unless the commissioners visiting such house or the visitors of such house shall, after such certificate shall have been produced to them, give their consent in writing that such patient shall be discharged or removed; provided that nothing herein contained shall prevent any patient from being transferred from any licensed house or any hospital to any other licensed house or any other hospital, or to any asylum, but in such case every such patient shall be placed under the control of an attendant belonging to the licensed house, hospital, or asylum to or from which he shall be about to be removed for the purpose of such removal, and shall remain under such control until such time as such removal shall be duly effected.

LXXVI. That it shall be lawful for any two or more of the commissioners to make visits to any patient detained in any house licensed by the commissioners, on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made (seven days at least to intervene between such visits) it shall appear to such visiting commissioners that such patient is detained without sufficient cause, it shall be lawful for the commissioners, if they shall think fit, to make such order as to the commissioners shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

LXXVII. That it shall be lawful for any two or more of the commissioners, of whom one shall be a physician and one a barrister, to make special visits to any patient detained in any house licensed by the justices or in any hospital, on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made it shall appear to such visiting commissioners that such patient is detained without sufficient cause, they may make such order as to them shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

LXXVIII. That it shall be lawful for any two or more of the visitors of any licensed house, of whom one shall be a physician, surgeon, or apothecary, to make special visits to any patient detained in such house, on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made it shall appear to such visitors that such patient is detained without sufficient cause, they may make such order as to them shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

LXXIX. That every such order by any commissioners or visitors for the discharge of a patient from any house licensed by justices, or from any hospital, shall be signed by them, and that each of such special visits shall be by the same commissioners or visitors; and that it shall not be lawful for such commissioners or visitors to order the discharge of any patient from any such last-mentioned house or hospital without having previously, if the medical attendant of such house or hospital shall have tendered himself for that purpose, examined him as to his opinion respecting the fitness of such patient to be discharged; and if such commissioners or visitors, shall after so examining such medical attendant, discharge such patient, and such medical attendant shall furnish them with any statement in writing containing his reasons against the discharge of such patient, they shall forthwith transmit such statement to the commissioners or to the clerk of the visitors, as the case may require, to be kept and registered in a book for that purpose.

8 & 9 Vict. c. 100.

Every order for the discharge of a patient under the last preceding powers to be signed by the persons exercising them, and to be subject to certain restrictions.

LXXX. Provided also, and be it enacted, That not less than seven days shall intervene between the first and second of such special visits; and that such commissioners or visitors shall, seven days previously to the second of such special visits, give notice thereof, either by post or by an entry in the patients book, to the proprietor or superintendent of the house licensed by justices or of the hospital in which the patient intended to be visited is detained; and that such proprietor or superintendent shall forthwith, if possible, transmit by post a copy of such notice, in the case of a patient not being a pauper, to the person by whose authority such patient was received into such house, or by whom the last payment on account of such patient was made, and in the case of a pauper, to the guardians of his parish or union, or if there be no such guardians, to one of the overseers for the time being of his parish, and also in the case of any patient detained in a house licensed by justices, to the clerk of the visitors of such house.

The last preceding powers to be exercised under certain other restrictions.

LXXXI. Provided always, nevertheless, and be it enacted, That none of the powers of discharge herein-before contained shall extend to any person who shall have been found lunatic by inquisition or under any inquiry directed by the Lord Chancellor, in pursuance of the powers in that behalf herein-after given to him (b), nor to any lunatic confined under any order or authority of her Majesty's principal Secretary of State for the Home Department, or under the order of any Court of criminal jurisdiction.

Preceding powers not to extend to persons found lunatic by inquisition, or confined under authority of Secretary of State.

LXXXII. That it shall be lawful for the visitors of any licensed house at any time to determine and regulate the dietary of the pauper patients therein; and that it shall be lawful for the visiting commissioners at any time to determine and regulate the dietary of the pauper patients in any licensed house or in

Power for visitors and visiting commissioners to regulate the dietary of pauper patients.

8 & 9 Vict. c. 100.

any hospital; and that if such determination and regulation of any visitors and of the visiting commissioners shall not agree with each other, then the determination and regulation of the visiting commissioners shall be followed: Provided always, nevertheless, that every such regulation shall be made to take effect only from such time as not to affect any contract existing on the first day of June last for the maintenance of pauper patients before the first day of June one thousand eight hundred and forty-six, or the expiration of such contract, whichever shall first happen.

Powers to Search.

Power for any visitor to give an order to the clerk of the visitors to search and give information.

LXXXIII. That if any person shall apply to any visitor in order to be informed whether any particular person is confined in any licensed house within the jurisdiction of such visitor, the said visitor, if he shall think it reasonable to permit such inquiry to be made, shall sign an order to the clerk of the visitors, and the said clerk shall, on receipt of such order, and on payment to him of a sum not exceeding seven shillings for his trouble, make search amongst the returns made to him in pursuance of this act whether the person inquired after is or has been within the then last twelve calendar months confined in any licensed house within the jurisdiction of such visitor; and if it shall appear that such person is or has been so confined the said clerk shall deliver to the person so applying a statement in writing, specifying the situation of the house in which the person so inquired after appears to be or to have been confined, and of the name of the proprietor or resident superintendent thereof, and also the date of the admission of such person into such licensed house, and (in case of his having been removed or discharged) the date of his removal or discharge therefrom.

Power for any commissioner to give an order to the secretary of the commissioners to search and give information whether any particular person is or has been within twelve months confined in any house or hospital.

LXXXIV. That if any person shall apply to any commissioner in order to be informed whether any particular person is confined in any licensed house, or in any hospital, asylum, or other place by this act made subject to the visitation of the commissioners, such commissioner, if he shall think it reasonable to permit such inquiry to be made, shall sign an order to the secretary of the commissioners, and the secretary shall, on the receipt of such order, and on payment to him of a sum not exceeding seven shillings (to be applied as herein-before provided (a)), make search amongst the returns made in pursuance of this act, or of any of the acts hereby repealed, whether the person inquired after is or has been within the last twelve calendar months confined in any house, hospital, asylum, or place by this act made subject to the visitation of the commissioners; and if it shall appear that such person is or has been so confined the secretary shall deliver to the person so applying

(a) See s. 33, *ante* p. 665.

a statement in writing, specifying the situation of the house, hospital, asylum, or place in which the person so inquired after appears to be or to have been confined, and also (so far as the said secretary can ascertain the same from any register or return in his possession) the name of the proprietor, superintendent, or principal officer of such house, hospital, asylum, or place, and also the date of the admission of such person into such licensed house, hospital, asylum, or other place, and (in case of his having been removed or discharged) the date of his removal or discharge therefrom.

LXXXV. That it shall be lawful for any one of the commissioners, as to patients confined in any house, hospital, or other place (not being a gaol) hereby authorised to be visited by the commissioners, and also for any one of the visitors of any licensed house as to patients confined in such house, at any time to give an order in writing under the hands of such one commissioner or visitor for the admission to any patient of any relation or friend of such patient (or of any medical or other person whom any relation or friend of such patient shall desire to be admitted to him), and such order of admission may be either for a single admission, or for an admission for any limited number of times, or for admission generally at all reasonable times, and either with or without any restriction as to such admission or admissions being in the presence of a keeper or not, or otherwise; and if the proprietor or superintendent of any such house, hospital, or place, shall refuse admission to, or shall prevent or obstruct the admission to any patient of, any relation, friend, or other person who shall produce such order of admission as aforesaid, he shall for every such refusal prevention, or obstruction, forfeit a sum not exceeding twenty pounds.

LXXXVI. That it shall be lawful for the proprietor or superintendent of any licensed house or of any hospital, with the consent in writing of any two of the commissioners, or in the case of a house licensed by justices of any two of the visitors of such house, to send or take, under proper control, any patient to any specified place for any definite time for the benefit of his health: provided always, nevertheless, that before any such consent as aforesaid shall be given by any commissioners or visitors, the approval in writing of the person who signed the order for the reception of such patient, or by whom the *past* (b) payment on account of such patient was made, shall be produced to such commissioners or visitors, unless they shall, on cause being shown, dispense with the same.

LXXXVII. That in every case in which any patient shall, under any of the powers or provisions of this act, be removed temporarily from the house or hospital into which the order for

8 & 9 Vict. c. 100.

Any one commissioner or visitor may give an order for the admission to any patient of any friend or relation, or any person named by a friend or relation.

Proprietor or superintendent, with consent of two commissioners or visitors, may take or send a patient to any place for his health.

In case of the removal of a patient, or of his escape and

(b) *Sic Lege, last*, ss. 40, 73, 80. 665.

8 & 9 Vict. c. 100.

recapture within fourteen days, the original order for his reception to remain in force.

Commissioners to report to the Lord Chancellor periodically.

Constitution of the private committee.

No person (except a person deriving no profit, or a committee,) to take charge of a single lunatic, except upon such order and medical certificates as aforesaid, and under certain obligations.

his reception was given, or be transferred from such house or hospital into any new house, and also in every case in which any patient shall escape from any house or hospital, and shall be retaken within fourteen days next after such escape, the certificate or certificates relating to and the original order for the reception of such patient shall respectively remain in force, in the same manner as the same would have done if such patient had not been so removed or transferred, or had not so escaped and been retaken.

LXXXVIII. That the commissioners shall, at the expiration of every six calendar months, report to the Lord Chancellor the number of visits which they shall have made, the number of patients whom they shall have seen, and the number of miles which they shall have travelled during such months, and shall on the first day of January in each year make a return to the Lord Chancellor of all sums received by them for travelling expenses, or upon any other and what account, and shall also in the month of June in every year make to the Lord Chancellor a report of the state and condition of the several houses, hospitals, asylums, and other places visited by them under this act, and of the care of the patients therein, and of such other particulars as they shall think deserving of notice; and a true copy of such reports, showing the number of visits made, the number of patients seen, and the number of miles travelled, and also a copy of such return of sums received for travelling expenses, or on any other and what account, shall be laid before Parliament within twenty-one days next after the commencement of every session of Parliament.

LXXXIX. That the permanent chairman for the time being of the commissioners, and two other of the commissioners to be appointed by the Lord Chancellor from time to time as occasion may require (one of whom shall be a physician or surgeon, and the other a barrister), shall be a committee, to be called "The Private Committee," for the purposes herein-after mentioned.

Reception of Single Lunatics in Unlicensed Houses.

XC. That no person (unless he be a person who derives no profit from the charge, or a committee appointed by the Lord Chancellor) shall receive to board or lodge in any house, other than an hospital registered under this act, or an asylum, or a house licensed under this act, or under one of the acts herein-before repealed, or take the care or charge of any one patient as a lunatic or alleged lunatic, without the like order and medical certificates in respect of such patient as are herein-before required on the reception of a patient (not being a pauper) into a licensed house; and that every person (except a person deriving no profit from the charge, or a committee appointed by the Lord Chancellor,) who shall receive to board or lodge in any unlicensed house, not being a registered hospital or an asylum,

or take the care or charge of any one patient as a lunatic or alleged lunatic, shall, within seven clear days after so receiving or taking such patient, transmit to the secretary of the commissioners a true and perfect copy of the order and medical certificates on which such patient has been so received, and a statement of the date of such reception, and of the situation of the house into which such patient has been received, and of the Christian and surname and occupation of the occupier thereof and of the person by whom the care and charge of such patient has been taken; and every such patient shall at least once in every two weeks be visited by a physician, surgeon, or apothecary not deriving, and not having a partner, father, son, or brother who derives, any profit from the care or charge of such patient; and such physician, surgeon, or apothecary shall enter in a book to be kept at the house or hospital for that purpose, to be called "The Medical Visitation Book," the date of each of his visits, and a statement of the condition of the patient's health, both mental and bodily, and of the condition of the house in which the patient is, and such book shall be produced to the visiting commissioner on every visit, and shall be signed by him as having been so produced; and the person by whom the care or charge of such patient has been taken, or into whose house he has been received as aforesaid, shall transmit to the secretary of the commissioners the same notices and statements of the death, removal, escape, and recapture of such lunatic, and within the same periods, as are herein-before required in the case of the death, removal, escape and recapture of a patient (not being a pauper) received into a licensed house; and that every person who shall receive into an unlicensed house, not being a registered hospital nor an asylum, or take the care or charge of any person therein as a lunatic, without first having such order and medical certificates as aforesaid, or who, having received any such patient, shall not within the several periods aforesaid transmit to the secretary of the commissioners such copy, statement, and notices as aforesaid, or shall fail to cause such patient to be so visited by a medical attendant as aforesaid, and every such medical attendant who shall make an untrue entry in the said medical visitation book, shall be guilty of a misdemeanor.

8 & 9 Vict. c. 100.

XCI. That the secretary to the commissioners shall preserve every copy transmitted as aforesaid of the order and certificates for the reception of any patient as a lunatic into an unlicensed house, and every statement and notice which may be transmitted to such secretary with respect to any such patient as aforesaid, and shall enter the same (in such form as the private committee shall direct) in a book to be kept for that purpose, to be called "The Private Register," and such private register shall be kept by such secretary in his own custody, and shall be inspected only by the members for the time being of the said private

Copy of the order and certificates, &c., with respect to lunatics received into an unlicensed house to be entered in a private register.

8 & 9 Vict. c. 100.

Members of the private committee to visit unlicensed houses receiving a single patient, and report.

The Lord Chancellor on such report, and the representation of the private committee, may order a lunatic to be removed.

Commissioners to report if property of lunatics be not duly protected or applied.

The Lord Chancellor to direct the Master in Lunacy to report as to the lunacy of any person detained as a lunatic, and to appoint guardians of his person and estate, and direct the application of his income.

committee, and by such other persons as the Lord Chancellor shall by writing under his hand appoint.

XCII. That it shall be lawful for any one member of the said private committee, on the direction of such committee, or of any two members thereof (of whom one member aforesaid may be one), at all reasonable times to visit every or any unlicensed house in which one patient only is received as a lunatic (unless such patient be so received by a person deriving no profit from the charge, or by a committee appointed by the Lord Chancellor), and to inquire and report to the said private committee on the treatment and state of health, both bodily and mental, of such patient; and a copy of every or any such report shall be entered in a private register, to be kept for that purpose by the secretary of the commissioners, and another copy thereof shall, if such private committee think it expedient, be laid before the Lord Chancellor.

XCIII. That it shall be lawful for the Lord Chancellor, on the representation of the said private committee, accompanied with a copy of a report made as last aforesaid as to any patient received or detained as a lunatic in an unlicensed house as aforesaid, to make an order that such patient shall be removed from such house, and from the care and charge of the person under whose care and charge such lunatic may be; and any person detaining such lunatic in such house, or in such care or charge, for the space of three days after a copy of such order shall have been left at such house or served on such person, shall be guilty of a misdemeanor.

Protection of Property of Lunatics in Confinement.

XCIV. That whenever the commissioners shall have reason to suppose that the property of any person detained or taken charge of as a lunatic is not duly protected, or that the income thereof is not duly applied for his maintenance, such commissioners shall make such inquiries relative thereto as they shall think proper, and report thereon to the Lord Chancellor.

XCV. That when any person shall have been received or taken charge of as a lunatic upon an order and certificates, or an order and certificate, in pursuance of the provisions of this act, or of any act hereinbefore repealed, and shall either have been detained as a lunatic for the twelve months then last past, or shall have been the subject of a report by the commissioners in pursuance of the provision lastly hereinbefore contained, it shall be lawful for the Lord Chancellor to direct that one of the said Masters in Lunacy shall, and thereupon one of the said Masters shall personally examine such person, and shall take such evidence and call for such information as to such Master shall seem necessary to satisfy him whether such person is a lunatic, and shall report thereon to the Lord Chancellor, and such report shall be filed with the secretary of lunatics; and it

shall be lawful for the Lord Chancellor from time to time to ^{8 & 9 Vict. c. 100.} make orders for the appointment of a guardian, or otherwise for the protection, care, and management of the person of any person who shall by any such report as last aforesaid be found to be a lunatic, and such guardian shall have the same powers and authorities as a committee of the person of a lunatic found such by inquisition now has, and also to make orders for the appointment of a receiver, or otherwise for the protection, care, and management of the estate of such lunatic, and such receiver shall have the same powers and authorities as a receiver of the estate of a lunatic found such by inquisition now has, and also to make orders for the application of the income of such lunatic, or a sufficient part thereof, for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such lunatic, and also as to the investment or other application for the purpose of accumulation of the overplus, if any, of such income, for the use of such lunatic, as to the Lord Chancellor shall from time to time in each case seem fit: Provided always, that such protection, care, and management shall continue only during such time as such lunatic shall continue to be detained as a lunatic upon an order and certificates or certificate as aforesaid, and for such further time, not exceeding six months, as the Lord Chancellor may fix: Provided also, that it shall be lawful for the Lord Chancellor in any such case, either before or after directing such inquiry by such Master as aforesaid, and whether such Master shall have made a report as aforesaid or not, to direct a commission in the nature of a writ *de lunatico inquirendo* to issue, to inquire of the lunacy of such person.

XCVI. That such Masters shall have power, in the prosecution of all inquiries and matters which may be referred to them as aforesaid or otherwise under this act, to summon persons before them, and to administer oaths, and take evidence, either *vivâ voce* or on affidavit, and to require the production of books, papers, accounts, and documents; and that the Lord Chancellor may by any order (either general or particular) refer to the said Masters any inquiries under the provisions of this act relating to the person and estate of any lunatic as to whom a report shall be made by a Master as aforesaid, in like manner as inquiries relating to the persons and estates of lunatics found such by inquisition are now referred to them.

Masters in Lunacy to have all necessary powers of inquiry, and to make inquiries referred to them.

XCVII. That it shall be lawful for the Lord Chancellor from time to time to make such orders as shall to him seem fit for regulating the form and mode of proceeding before the Lord Chancellor and before the said Masters, and of any other proceedings pursuant to the provisions of this act, for the due protection, care, and management of the persons and estates of lunatics as to whom such reports shall be made by the said Masters as aforesaid, and also for fixing, altering, and discon-

Lord Chancellor to make orders and regulations, and fix fees.

8 & 9 Vict. c. 100. timing the fees to be received and taken in respect of such proceedings, as to the Lord Chancellor shall from time to time seem fit: Provided nevertheless, that all fees to be so received and taken shall be paid into the Bank of England, and placed to the credit of the Accountant-General of the Court of Chancery, to the account intituled "the Suitors' Fee Fund Account," in like manner as and together with the fees payable under the act passed in the fifth and sixth years of her present Majesty, intituled "An Act to alter and amend the Practice and Course of Proceeding under Commissions in the Nature of Writs *De lunatico inquirendo*," and be applied in like manner as such last-mentioned fees.

5 & 6 Vict. c. 84. Masters ex-penses how to be paid. XCVIII. That the travelling and other expenses of the said Masters and their clerks shall be paid to them, by virtue of any order or orders of the Court of Chancery, out of the said fund, intituled "the Suitors' Fee Fund Account," in the same manner as their expenses under the said last-mentioned act. (a).

Protection of Proprietors.

Proprietors, superintendents, and other authorized persons, may plead the order and certificates for receiving any lunatic in bar of all proceedings at law. XCIX. That every proprietor and superintendent of a licensed house or registered hospital, and every other person hereby or by any of the acts hereinbefore repealed authorized to receive or take charge of a lunatic upon an order, and who shall receive or has received a proper order, in pursuance of this act or any of the said repealed acts, accompanied with the required medical certificates or certificate, for the reception or taking charge of any person as a lunatic, and the assistants and servants of such proprietor, superintendent, or other person, shall have power and authority to take charge of, receive, and detain such patient until he shall die or be removed or discharged by due authority, and in case of the escape at any time or times of such patient to retake him at any time within fourteen days after such escape, and again to detain him as aforesaid; and in every writ, indictment, information, action, and other proceeding which shall be preferred or brought against any such proprietor, superintendent, or other person authorized as aforesaid, or against any assistant or servant of any such proprietor, superintendent, or authorized person, for taking, confining, detaining, or retaking any person as a lunatic, the party complained of may plead such order and certificates or certificate in defence to any such writ, indictment, information, action, or other proceeding as aforesaid, and such order and certificates or certificate shall, as respects such party, be a justification for taking, confining, detaining, or retaking such lunatic or alleged lunatic.

Witnesses.

Commissioners and visitors may summon wit- C. That it shall be lawful for the commissioners, or any two of them, and also for the visitors of any licensed house, or any

(a) The orders as to the protection, care, and management of lunatics under this act, are stated *ante*, pp. 223—226.

two of such visitors, from time to time, as they shall see occasion, to require, by summons under the common seal of the commission, if by the commissioners, and if by two only of the commissioners, or by two visitors, then under the hands and seals of such two commissioners or two visitors, as the case may be, (according to the form in schedule (I.) annexed to this act, or as near thereto as the case will permit), any person to appear before them to testify on oath the truth touching any matters respecting which such commissioners and visitors respectively are by this act authorized to inquire (which oath such commissioners or visitors are hereby empowered to administer); and every person who shall not appear before such commissioners or visitors pursuant to such summons, or shall not assign some reasonable excuse for not so appearing, or shall appear and refuse to be sworn or examined, shall, on being convicted thereof before one of her Majesty's justices for the county or borough within which the place at which such person shall have been by such summons required to appear and give evidence is situate, shall for every such neglect or refusal forfeit a sum not exceeding fifty pounds.

8 & 9 Vict. c. 100.
nesses to give evidence, with a penalty for non-compliance.

CI. That it shall be lawful for any commissioners or visitors who shall summon any person to appear and give evidence as aforesaid to direct the secretary of the commissioners or the clerk of such visitors, as the case may be, to pay to such person all reasonable expenses of his appearance and attendance in pursuance of such summons, the same to be considered as expenses incurred by such commissioners and visitors respectively in the execution of this act, and to be taken into account and paid accordingly.

Provision for the payment of witnesses expenses.

Recovery of Penalties.

CII. That every complaint or information of or for any offence against this act, where any pecuniary penalty is hereby imposed, (except when hereby otherwise provided for), may be made before one justice; and when any person shall be charged upon oath before a justice for any such offence against this act, such justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, and upon proof of the due service of the summons (either personally or by leaving the same at his last or usual place of abode) any two justices may either proceed to hear and determine the case, or may issue their warrant for apprehending such person, and bringing him before any two justices; and any two justices shall and may, upon the appearing of such person pursuant to such summons, or upon such person being apprehended with such warrant, or upon the non-appearance of such person, hear the matter of every such complaint or information, and make any such determination thereon as such justices shall think

Upon complaint made of any offence against this act, justices to require the attendance of the person charged, and adjudicate thereon.

■ & 9 Vict. c. 100.

Recovery of
penalties, and
application
thereof.

proper ; and upon conviction of any person such justices may, if they shall think fit, reduce the amount of the penalty by this act imposed for such offence to any sum not less than one-fourth of the amount thereof, and shall and may issue a warrant under their hands and seals for levying such penalty or reduced penalty, and all costs and charges of such summons, warrant, and hearing and all incidental costs and charges, by distress and sale of the goods and chattels of the person so convicted ; and it shall be lawful for any such two justices to order any person so convicted to be detained and kept in the custody of any constable or other peace officer until return can be conveniently made to such warrant of distress, unless the said offender shall give security, to the satisfaction of such justices, by way of recognizance or otherwise, for his appearance before such justices on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security ; but if upon the return of such warrant of distress it shall appear that no sufficient distress can be had whereupon to levy the said penalty, and such costs and charges as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justices, either by the confession of the offender or otherwise, that the offender hath not sufficient goods and chattels whereupon the said penalty, costs, and charges may be levied, such justices shall and may, by warrant under their hands and seals, commit such offender to the common gaol or house of correction for any term not exceeding three calendar months, unless such penalty, and all such costs and charges as aforesaid, shall be sooner paid ; and all such penalties, when recovered, shall be paid, when the complaint or information shall be laid or brought by or by the direction of the commissioners, to the secretary of the commissioners, to be by him applied and accounted for as herein-before directed with respect to monies received for licenses granted by the commissioners, and when the complaint or information shall be laid or brought by the direction of any visitors, to the clerk of the peace for the county or borough, to be by him applied and accounted for as herein-before directed with respect to monies received for licenses granted by the justices of such county or borough ; and the overplus (if any) arising from such distress and sale, after payment of the penalty and all costs and charges as aforesaid, shall be paid, upon demand, to the owner of the goods and chattels so distrained.

Form of conviction before
justices.

CIII. That the justices before whom any person shall be convicted of any offence against this act for which a pecuniary penalty is imposed may cause the conviction to be drawn up in the following form, or in any other form to the same effect, as the case may require ; and that no conviction under this act shall be void through want of form :

‘BE it remembered, that on the day of in 8 & 9 Vict. c. 100.
 ‘the year of our Lord at in the county [or
 ‘borough] of *A. B.* was convicted before us
 ‘of her Majesty’s justices of the peace for the said county [or
 ‘borough], for that he the said did and we
 ‘the said adjudge the said for his offence to
 ‘pay the sum of .

CIV. Provided always, and be it enacted, that any person Appeal to Quar-
ter Sessions.
 who shall think himself aggrieved by any order or determination
 of any justices under this act may, within four calendar months
 after such order made or given, appeal to the justices at general
 or quarter sessions, the person appealing having first given at
 least fourteen clear days notice in writing of such appeal, and
 the nature and matter thereof, to the person appealed against,
 and forthwith after such notice entering into a recognizance
 before some justice, with two sufficient sureties, conditioned to
 try such appeal, and to abide the order and award of the said
 Court thereupon; and the said justices at general or quarter
 sessions, upon the proof of such notice and recognizance having
 been given and entered into, shall in a summary way hear and
 determine such appeal, or, if they think proper, adjourn the
 hearing thereof until the next general or quarter sessions, and,
 if they see cause, may mitigate any penalty to not less than one-
 fourth of the amount imposed by this act, and may order any
 money to be returned which shall have been levied in pur-
 suance of such order or determination, and shall and may also
 award such further satisfaction to be made to the party injured,
 or such costs to either of the parties, as they shall judge reason-
 able and proper; and all such determinations of the said
 justices at general or quarter sessions shall be final, binding,
 and conclusive upon all parties to all intents and purposes
 whatsoever.

CV. That if any action or suit shall be brought against any Actions to be
commenced
within six
calendar
months.
 person for any thing done in pursuance of this act or of any of
 the acts hereby repealed, the same shall be commenced within
 twelve calendar months next after the release of the party
 bringing the action, and shall be laid or brought in the county
 or borough where the cause of action shall have arisen, and not
 elsewhere; and the defendant in every such action or suit may,
 at his election, plead specially or the general issue not guilty,
 and give this act and the special matter in evidence at any trial
 to be had thereupon, and that the same was done in pursuance
 and by the authority of this act; and if the same shall appear Act may be
given in evi-
dence.
 to be so done, or that such action or suit shall be brought in
 any other county or borough than as aforesaid, or shall not have
 been commenced within the time before limited for bringing the
 same, then the jury shall find a verdict for the defendant; and
 upon a verdict being so found, or if the plaintiff shall be non-

8 & 9 Vict. c. 100. suited, or discontinue his action or suit after the defendant shall have appeared, or if upon demurrer judgment shall be given against the plaintiff, then the defendant shall recover double costs, and have such remedy for recovering the same as any defendant hath or may have in any other cases by law.

Prosecution of Offenders.

Offenders to be prosecuted, and penalties sued for by the secretary of the commissioners and the clerk of any visitors, and by no person without the authority of the commissioners or visitors.

CVI. That it shall be lawful for the secretary of the commissioners, on their order, to prosecute any person for any offence against the provisions of this act, and to sue for and recover any penalty to which any person is made liable by this act; and all penalties sued for and recovered by such secretary shall be paid to him, and be by him applied and accounted for as herein-before directed with respect to monies received for licenses granted by the commissioners (a); and that it shall be lawful for the clerk of any visitors, on their order, to prosecute any person for any offence against the provisions of this act committed within the jurisdiction of such visitors, and to sue for and recover any penalty to which any person within the jurisdiction of such visitors is made liable by this act; and all penalties sued for and recovered by any such clerk shall be paid to him, and be by him paid to the clerk of the peace for such county or borough, and be by such clerk of the peace applied and accounted for as herein-before directed with respect to monies received for licenses by such clerk of the peace; and it shall not be lawful for any one to prosecute any person for any offence against the provisions of this act, or to sue for any penalty to which any person is made liable by this act, except by order of the commissioners or of visitors having jurisdiction in the place where the cause of prosecution has arisen or the penalty been incurred, or with the consent of her Majesty's Attorney General or Solicitor General for England for the time being.

Offenders against the provisions of any of the repealed acts may be prosecuted under this act.

CVII. That notwithstanding the repeal of the several acts herein-before repealed, every offence heretofore committed against any of the provisions of any of the same acts may be prosecuted, and every penalty heretofore incurred by any person for any offence against the provisions of any of the same acts may be sued for and recovered, by the secretary of the commissioners, in the same manner and with all the same powers and rights as if such offence had been committed or such penalty incurred for an offence against the provisions of this act; and every penalty so recovered shall be applied in the same manner as a penalty recovered for an offence against the provisions of this act.

No person to be punishable for omitting to send

CVIII. That when any person shall be proceeded against, under the provisions of this act, for omitting to transmit or

(a) See s. 33, *ante*, p. 665.

send any copy, list, notice, statement, or other document herein-before required to be transmitted or sent by such person, and such person shall prove by the testimony of one witness upon oath that the copy, list, notice, statement, or document in respect of which such proceeding is taken was put into the post in due time, or (in case of documents required to be transmitted or sent to the commissioners or a clerk of the peace) left at the office of the commissioners or of the clerk of the peace, and shall have been properly addressed, such proof shall be a bar to all further proceeding in respect of such omission.

8 & 9 Vict. c. 100.

any copy, &c., if proved to have been put in the post, or left at the proper office.

CIX. That the costs, charges, and expenses incurred by or under the authority or order of the commissioners in proceedings under this act shall be paid by the secretary of the commissioners, and included by him in the account of receipts and payments herein-before directed to be kept by him; (a) and that the costs, charges, and expenses incurred by or under the order of any visitors in proceedings under this act shall be paid by the clerk of the peace of their county or borough, and included by him in the account of receipts and payments herein-before directed to be kept by him (b).

Costs incurred by the commissioners to be paid by their secretary, and costs incurred by visitors by the clerk of the peace.

Visitation of Asylums, Gaols, and Workhouses.

CX. That two or more of the commissioners, one at least of whom shall be a physician or surgeon, and one at least a barrister, shall and may, once or oftener in each year, on such day or days, and at such hours of the day, and for such length of time as they shall think fit, visit every asylum for lunatics, and every gaol in which there shall be or alleged to be any lunatic, and shall inquire whether the provisions of the law have been carried out as to the construction of each asylum visited, and as to its visitation and management, and also as to the regularity of the admissions and discharges of patients therein and therefrom; and whether divine service is performed therein; and whether any system of coercion is in practice therein, and the result thereof; and as to the classification or non-classification of patients therein, and the number of attendants on each class; and as to the occupations and amusements of the patients, and the effects thereof; and as to the condition, as well mental as bodily, of the pauper patients when first received; and also as to the dietary of the pauper patients; and shall also make such other inquiries as to every or any such asylum, and all such inquiries as to the lunatics in any gaol, as to such visiting commissioners shall seem meet.

Commissioners to visit asylums and gaols.

CXI. That two or more of the commissioners, one at least of whom shall be a physician or surgeon, and one at least a barrister, shall and may, once or oftener in each year, on such day

Commissioners to visit work-houses.

(a) See s. 34, *ante*, p. 665.

(b) See s. 37, *ante*, p. 666.

8 & 9 Vict. c. 100.

or days, and such hours in the day, and for such length of time as they shall think fit, visit every parish and union workhouse in which there shall be or alleged to be any lunatic, and shall inquire whether the provisions of the law as to lunatics have been carried out as to the arrangements, visitation, and management of such workhouse, and as to the dietary, accommodation, and treatment of the lunatics in such workhouse, and shall report in writing thereon to the Poor Law Commissioners for England and Wales (c).

Provision for the visitation of lunatics under the care of committees, and also of state and criminal lunatics, and other lunatics not comprised in the preceding provisions.

CXII. That it shall be lawful for the Lord Chancellor, in the case of any lunatic under the care of a committee appointed by the Lord Chancellor, and for the Lord Chancellor, or her Majesty's principal Secretary of State for the Home Department, in the case of any lunatic under the care of any person receiving or taking the charge of such one lunatic only, and deriving no profit from the charge, and in the case of any person confined as a state lunatic, or as a lunatic under the order of any Criminal Court of Justice, and in the case of every other person detained or taken charge of as a lunatic, or represented to be a lunatic, or to be under any restraint as a lunatic, at any time, by an order in writing under the hand of the Lord Chancellor or the said Secretary of State, as the case may be, directed to the commissioners or any of them, or to any other person, to require the persons or person to whom such order shall be directed, or any of them, to visit and examine such lunatic or supposed lunatic, and to make a report to the Lord Chancellor, or to her Majesty's principal Secretary of State for the Home Department, of such matters as in such order shall be directed to be inquired into (d).

(c) By 4 & 5 Wm. 4, c. 76, s. 45, it is enacted, that nothing in that act contained shall authorize the detention in any workhouse of any dangerous lunatic, insane person, or idiot, for any longer period than fourteen days; and every person wilfully detaining in any workhouse any such lunatic, insane person, or idiot, for more than fourteen days, shall be deemed guilty of a misdemeanor: Provided always, that nothing therein contained shall extend to any place duly licensed for the reception of lunatics and other insane persons, or to any workhouse being also a county lunatic asylum.

(d) It seems that the Lord Chancellor cannot act under the above provision upon petition. In a case where a petition was presented to the Lord Chancellor praying that he would, in pursuance of the powers given by the statute 9 Geo. 4, c. 41, s. 42, which are similar to the above section, order a person properly qualified to visit the petitioner, and report whether he was or was not in a sound state of mind; it appeared that the petitioner was a gentleman of property, who had, about two years before, been removed from his house to a lunatic asylum, where he then remained, and that no commission of lunacy had issued. Lord Brougham, C., said—The act of Parliament on which the application was founded, empowered the Lord Chancellor, the Chief Justices of the King's Bench and Common Pleas, and the Secretary of State, to direct inquiries in such a case as this was represented to be, upon application being made to them. The application might be by private letter, in a conversation, or upon affidavit, if they should think fit to require it; but there was nothing in the act enabling him or any other Judge sitting as a Judge in open Court, to hear such a matter before him upon petition. The circumstance of the Secretary of

Lord Chancellor, &c., may authorize Special Visitation.

CXIII. That it shall be lawful for the Lord Chancellor or her Majesty's principal Secretary of State for the Home Department to employ any commissioner appointed under this act, or other person, to inspect or inquire into the state of any asylum, hospital, gaol, house, or place wherein any lunatic, or person represented to be lunatic, shall be confined or alleged to be confined, and to report to him the result of such inspection and inquiry; and every such person so employed, and not being a commissioner, may be paid such sum of money for his attendance and trouble as to the Lord Chancellor or her Majesty's principal Secretary of State for the Home Department shall seem reasonable; and every such person so employed, whether a commissioner or not, shall be allowed his reasonable travelling or other expenses while so employed; and such sum of money for attendance and trouble, and such expenses shall be charged on and shall be paid out of the Contingency Fund of the Home Office.

Power for the Lord Chancellor and Secretary of State for the Home Department to authorize a special visitation of any place where a lunatic is represented to be confined.

Interpretation of Words.

CXIV. That in this act and the schedules thereto the words and expressions following shall have the several meanings hereby assigned to them, unless there shall be something in the subject or context repugnant to such construction; (that is to say,)

Interpretation clause.

"Borough" shall mean every borough, town, and city corporate having a separate quarter sessions, recorder, and clerk of the peace:

"County" shall mean every county, riding, division of a county, county of a city, county of a town, liberty, and other place having a separate commission of the peace, and not being a "borough" within the meaning aforesaid:

"The Lord Chancellor" shall mean the Lord High Chancellor, the Lord Keeper or Commissioners of the Great Seal of Great Britain, and other the person or persons for the time being intrusted, by virtue of the Queen's sign manual, with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind:

State being clothed with the same powers as the other persons he had named, was enough to show, that the act had no judicial import, and that the authority it conferred upon him, was merely of a *ministerial* nature. The petition was dismissed with costs, which were ordered to be paid by the party who had been the means of putting the application first in motion. His lordship said, all he should do upon any other application would be, to require the keepers of the asylum to explain the reasons upon which they acted in detaining the gentleman.

In re Knight, 31st May, 1831; Law J., 1831, Ch. 230.

8 & 9 Vict. c. 100.

- “Barrister” shall mean a barrister and a serjeant-at-law; and a serjeant-at-law who shall have been called to the Bar five years or more before his appointment to be a commissioner shall be considered as a barrister of five years standing:
- “Lunatic” shall mean every insane person, and every person being an idiot or lunatic or of unsound mind:
- “Parish” shall mean any parish, township, hamlet, vill, tithing, extra-parochial place, or place maintaining its own poor:
- “Officiating clergyman of a [*or the*] parish” shall mean a clergyman regularly officiating and acting as the minister or one of the ministers of the parish, chapelry, or ecclesiastical district:
- “Borough rate” shall mean a borough rate, and any funds assessed upon or raised in or belonging to any borough in the nature of a borough rate, and applicable to the purposes to which borough rates are applicable:
- “County rate” shall mean a county rate, and any funds assessed upon or raised in or belonging to any county in the nature of a county rate, and applicable to the purposes to which county rates are applicable:
- “Pauper” shall mean every person maintained wholly or in part at the expense of any parish, union, county, or borough:
- “Patient” shall mean every person received or detained as a lunatic, or taken care or charge of as a lunatic:
- “Private patient” shall mean every patient who is not a pauper:
- “Proprietor” shall mean every person to whom any license has been granted under the provisions of any act hereby repealed, or shall be granted under the provisions of this act, and every person keeping, owning, having any interest or exercising any duties or powers of a proprietor in any licensed house:
- “Clerk of the Peace” shall mean every clerk of the peace and person acting as such, and every deputy duly appointed:
- “Medical attendant” shall mean every physician, surgeon, and apothecary who shall keep any licensed house, or shall in his medical capacity attend any licensed house, or any asylum, hospital, or other place where any lunatic shall be confined:
- “Justice” shall mean a justice of the peace:
- “Asylum” shall mean any lunatic asylum already erected and established under an act passed in the forty-eighth year of the reign of his late Majesty King George the Third, intituled “An Act for the better Care and Maintenance of Lunatics, being Paupers or Criminals in England,” or erected and established, or hereafter to be erected and established, under or which have been made subject or

48 Geo. 3, c. 96.

liable to any of the provisions of an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics, in England," or hereafter to be erected and established under the provisions of any act for the erection or regulation of county or borough lunatic asylums :

8 & 9 Vict. c. 100.

9 Geo. 4, c. 40.

"Hospital" shall mean any hospital or part of an hospital or other house or institution (not being an asylum) wherein lunatics are received, and supported wholly or partly by voluntary contributions, or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients :

"Licensed house" shall mean a house licensed under the provisions of this act, or of some act hereby repealed, for the reception of lunatics :

"Oath" shall mean an oath, and every affirmation or other declaration or solemnity lawfully substituted for an "oath" in the case of Quakers or other persons exempted by law from the necessity of taking an oath :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

CXV. That for the purposes of this act every borough and county shall include every place situate within the limits of such borough or county, and not having a separate commission of the peace ; and for the purposes of this act every place situate within the limits of any borough or county, and not having a separate commission of the peace, shall be within the jurisdiction of the justices of such borough or county ; and that the justices of every borough shall, for the purposes of this act, assemble in Special Sessions at such times as the Quarter Sessions for such borough shall be holden ; and that all acts hereinbefore required to be done by the justices of counties in General or Quarter Sessions assembled may be done by the justices of boroughs at such Special Sessions.

Boroughs and counties to comprise all places therein not having separate commission of the peace.

Exemption.

CXVI. That nothing in this act contained shall extend to the Royal Hospital of Bethlehem, or any building adjacent thereto and used therewith : Provided always, that it shall be lawful for any commissioner or other person whom the Lord Chancellor or any one of Her Majesty's principal Secretaries of State shall at any time, by an order in writing under the hand of the said

Act not to extend to Bethlehem Hospital.

8 & 9 Vict. c. 100.

Lord Chancellor or Secretary of State, direct to visit and examine the Royal Hospital of Bethlehem, and every or any building adjacent thereto as aforesaid, and every or any person confined therein.

Act to be confined to England and Wales.

CXVII. That this act shall extend only to England and Wales.

Alteration of act.

CXVIII. That this act may be amended or repealed by any act to be passed in this present session of Parliament.

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.) Section 30, *ante*, p. 664.

FORM OF LICENSE.

KNOW ALL MEN, that we, the commissioners in lunacy, [*or* we the undersigned justices of the peace, acting in and for in general [*or* quarter *or* special] sessions assembled,] do hereby certify, that *A. B.* of in the parish of in the county of hath delivered to us [*or* the clerk of the peace,] a plan and description of a house and premises proposed to be licensed for the reception of lunatics, situate at in the county of [*or, in the case of a renewed license,* hath delivered to us [*or* the clerk of the peace] a list of the number of patients now detained in a house and premises licensed on the day of last, for the reception of lunatics, situate at in the county of], and we, having considered and approved the same, do hereby authorize and empower the said *A. B.*, (he intending [*or* not intending] to reside therein) to use and employ the said house and premises for the reception of male [*or* female, *or* male and female] lunatics, of whom not more than shall be private patients, for the space of calendar months from this date.

Sealed with our common seal [*or* given under our hands and seals], this day of in the year of our Lord 18 .

Witness,

Y. Z. Secretary to the commissioners of lunacy,
[*or* clerk of the peace.]

SCHEDULE (B.) Section 45, *ante*, p. 669.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT.

I, the undersigned, hereby request you to receive *A. B.* a lunatic [*or an insane person, or an idiot, or a person of unsound mind*], as a patient into your house [*or hospital*]. Subjoined is a statement respecting the said *A. B.*

(Signed)

*Name.**Occupation (if any).**Place of Abode.*

*Degree of Relationship (if any),
or other circumstances of
Connexion with the Patient.*

Name of patient, with Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

Previous place of abode.

Religious persuasion, so far as known.

Duration of existing attack.

Whether first attack.

Age (if known) on first attack.

Whether subject to epilepsy.

Whether suicidal or dangerous to others.

Previous place of confinement (if any).

Whether found lunatic by inquisition, and date of commission.

Special circumstances (if any) preventing the patient being
examined, before admission, separately, by two medical
practitioners.

Special circumstances (if any) preventing the insertion of any
of above particulars.

(Signed)

Name.

Dated this day of One thousand eight hundred
and

To proprietor [*or superintendent*] of
[*describing the house or hospital by situation and name, if any*].

SCHEDULE (C.) Section 45, *ante*, p. 670.

FORM of a MEDICAL CERTIFICATE in the case of PRIVATE PATIENTS.

I, _____, being a physician, *or* surgeon, *or* an apothecary, duly authorized to practise as such, hereby certify, that I have this day, separately from any other medical practitioner, visited and personally examined *A. B.*, the person named in the accompanying statement and order, and that the said *A. B.* is a lunatic [*or* an insane person, *or* an idiot, *or* a person of unsound mind], and a proper person to be confined, and that I have formed this opinion from the following fact or facts; viz.

(Signed)

*Name.**Place of abode.*Dated this _____
dred and _____

day of _____

One thousand eight hun-

SCHEDULE (D.) Section 48, *ante*, p. 671.

ORDER for the RECEPTION of a PAUPER PATIENT.

WE, the undersigned, having called to our assistance a physician [*or* surgeon, *or* apothecary, *as the case may be*], not being the medical officer of the parish or union to which the said *A. B.* belongs, and having personally examined *A. B.*, a pauper, and being satisfied that the said *A. B.* is a lunatic [*or* an insane person, *or* an idiot, *or* a person of unsound mind], and a proper person to be confined, hereby request you to receive the said *A. B.* as a patient into your house or hospital.

Subjoined is a statement respecting the said *A. B.*

(Signed)

Name.

A justice of the peace for the city or
borough of _____ [*or* an *or* the
officiating clergyman of the parish
of _____].

Name.

With the relieving officer of the union
or parish of _____ [*or* with an
overseer of the parish of _____].

STATEMENT.

Name of patients, and Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

Previous place of abode.

Religious persuasion, so far as known.

Length of time insane,

Whether first attack.

Age (if known) on first attack.

Whether subject to epilepsy.

Whether suicidal or dangerous to others.

Previous places of confinement (if any).

I certify that to the best of my knowledge the above particulars are correctly stated.

(Signed)

[To be signed by the relieving officer or overseer signing the order].

Dated this day of One thousand eight hundred

To proprietor [or superintendent] of
[describing the house or hospital by situation and name, if any].



MEDICAL CERTIFICATE.

I, being a physician, or surgeon, or an apothecary, duly authorized to practise as such, hereby certify, that I have this day personally examined *A. B.*, the person named in the statement and order, and that the said *A. B.* is a lunatic [or, an insane person, or an idiot, or a person of an unsound mind], and a proper person to be confined.

(Signed)

Name.

Place of abode.

Dated this day of One thousand eight hundred and

SCHEDULE (F.) Section 52, ante, p. 672.

NOTICE OF ADMISSION.

I hereby give you notice, That *A. B.* was received into this house [*or hospital*] as a private [*or pauper*] patient on the day of _____ and I hereby transmit a copy of the order and medical certificates [*or certificate*] on which he was received.

Subjoined is a statement with respect to the mental and bodily condition of the above-named patient.

(Signed) _____
Superintendent
[*or Proprietor*] of _____
day of _____ One thousand eight
hundred and _____

STATEMENT.

I have this day seen and personally examined _____ the patient named in the above notice, and hereby certify that with respect to mental state he [*or she*] _____ and that with respect to bodily health and condition he [*or she*] _____

(Signed) _____
Medical Proprietor [*or Superin-*
tendent, or attendant].
day of _____ One thousand eight
hundred and _____

SCHEDULE (G. 1). Section 54, ante, p. 673.

REGISTER OF DISCHARGES AND DEATHS.

Date of Dis-charge or Death.	Date of last Admis-sion.	No. in Register of Patients.	Chris-tian and Sur-name at Length.	Sex and Class.				Discharged.						Died.		Assigned Cause of Death.	Age at Death.		Observations.
				Private.		Pauper.		Reco-vered.		Relieved		Not im-proved.					M.	F.	
				M.	F.	M.	F.	M.	F.	M.	F.	M.	F.	M.	F.		M.	F.	
1846. Sept. 1.	1846. Jan. 3.	1	William Johnson	}	..	..	1	..	1	..									
1848. Dec. 2.	1848. June 9.	4	William Johnson		}	..	..	1	..	1	..								
1853. June 8.	1852. May 6.	7	William Johnson			..	..	1	..	1	..	..	..	..	..	1	Phthisis	27	

SCHEDULE (G. 2.) Section 54, *ante*, p. 673.

FORM of NOTICE of DISCHARGE or DEATH.

I hereby give you notice, That a private [or
pauper] patient, received into this house [or hospital] on the
day of was discharged therefrom recovered
[or relieved, or not improved,] by the authority of
[or died therein, on the day of]

(Signed)

Superintendent [*or* Proprietor]
of House [*or* Hospital]
at

Dated this day of One thousand eight
hundred and

In case of death, add " and I further certify, that A. B. was present at the death of the said _____; and that the apparent cause of death of the said _____ [ascertained by post mortem examination (if so)] was _____."

SCHEDULE (H.) Section 59, *ante*, p. 674.

FORM of MEDICAL JOURNAL and WEEKLY REPORT.

[illegible]

SCHEDULE (I.) Section 100, *ante*, p. 690.

FORM OF SUMMONS.

We, the Commissioners in Lunacy [*or* we whose names are hereunto set and seals affixed, being two of the Commissioners in Lunacy, *or* Visitors] appointed under or by virtue of an act passed in the year of the reign of her present Majesty, intituled [*here insert the title of the act*], do hereby summon and require you personally to appear before us at in the parish of in the county of on next the day of at the hour of in the noon of the same day, and then and there to be examined, and to testify the truth touching certain matters relating to the execution of the said act.

Sealed with the common seal of "the Commissioners in Lunacy" [*or* given under our hands and seals], this day of in the year of our Lord One thousand eight hundred and

LIST OF METROPOLITAN LICENSED HOUSES.

8th July, 1846.

Houses, and where Situate.		To whom Licensed.	Licensed for		Of whom may be Private Patients.
			M.	F.	
Battersea	Althorpe House* (a)	James Tow	15	15	25
"	York House	J. Parkin, Surgeon, and Dr. Millingen	30	...	All
Bethnal Green	Red House* (b)	Jas. Phillips, Surgeon	309	...	125
"	White House*	Ditto	...	341	125
Bow	Grove Hall*	Edward Byas	110	200	30
Brentford	Wyke House	Dr. Costello	24	6	All
Brompton	Clarence Villa	Samuel Batten	2	...	All
"	Cowper House	C.A. Elliott & C. Wing, Surgeon	30	20	All
"	Earl's Court	Mrs. Bradbury	...	40	All
Brooke Green	Hope House	Daniel T. Roy, Surgeon	12	...	All
Camberwell	Camberwell House*	J. H. Paul, Surgeon	100	120	20
Chelsea	Blackland's House	Dr. Sutherland	35	...	All
"	Warwick House	Mrs. Fleming	...	6	All
"	Elm House	Miss M. T. Elliott	...	8	All
Chiswick	Manor House	Robert Bell	17	6	All
Clapham	Retreat	John Bush, Surgeon	16	8	All
Clapton, Upper	Brooke House	Misses Pettingall	25	24	All
Fulham	Beaufort House	Miss M. A. Pierce	2	8	All
"	Normand House	Mrs. Taltourd	...	21	All
"	Otto House	Dr. Sutherland	...	35	All
Hackney	Mare Street House	William Ayre, Surgeon	...	10	All
"	London House	William Oxley, Surgeon	16	16	All
"	Pembroke House	Dr. Williams	85	10	All
Hammersmith	Vimeira House	Mrs. Gale	1	7	All
"	Sussex House	Dr. F. Winslow	15	5	All
"	3, Brandenburgh Place	Ditto	5	...	All
Hanwell	Elm Grove House	Mrs. Wood	...	10	All
"	Lawn House	Dr. Conolly	...	12	All
"	"	Miss Smith	...	10	All
"	Southall Park	Geo. W. Daniel, Surgeon	15	15	All
"	Shrubbery, Southall	Dr. John B. Steward	...	4	All
Hillingdon	Moorcroft House	Messrs. Stilwell, Surgeons	30	16	All
"	Norland House	J. B. Newman	5	...	All
Hounslow	Lampton House	William Smith	8	9	All
Hoxton	Hoxton House*	E. L. Bryan, Surgeon	155	280	100
"	Whitmore House	John Warburton	30	30	All
Kensington	Kensington House	Dr. Philp	35	40	All
Lewisham	Dartmouth House	James Cole	22	3	All
Peckham	Peckham House*	Peter Armstrong	177	243	70
St. John's Wood	22, North Bank	Alfred G. Kerr, Surgeon	...	7	All
St. Marylebone	Workhouse*	Dr. Boyd	35	40	None
St. Pancras	Weston House	W. B. Diamond, Surgeon	11	3	All
Stoke Newington	Grove House	Jas. R. Atkins, Surgeon	12	14	All
"	Northumberland House	Richard Birkett	35	30	All
Sunbury	Halliford House	Dr. Seaton	3	3	All
Turnham Green	Terrace	J. T. Jackson	2	...	All

(a) Paupers are received in the houses to which an asterisk is affixed.

(b) The Red House and White House are included in one license as Bethnal House.

LUNATIC ASYLUMS FOR COUNTIES AND BOROUGHES IN ENGLAND AND WALES.

8 & 9 *Victoria*, c. 126.

An Act to amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics, in England.]

[8th August, 1845.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled, "An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics, in England," shall be repealed, except so far as the said act repealed any previous act or acts, and except as to any matters committed or done, or contracted to be committed or done, before the passing of this act, which shall be as if this act had not passed: Provided always, nevertheless, that all asylums which have been commenced under the said repealed act shall be completed under the said repealed act or this act, and that all asylums which have been or shall be erected, completed, or established under the said repealed act, or any act thereby repealed, shall, after the passing of this act, be regulated under and be subject to the provisions and directions of this act.

Repeal of 9 Geo.
4, c. 40.

Proviso for
asylums com-
menced under
the repealed act.

II. That the justices of every county and borough which has no asylum for the pauper lunatics thereof shall, after the passing of this act, either erect or provide an asylum for the pauper lunatics of such county or borough alone, or shall unite with some county or borough (whether such last-named county or borough shall or shall not have a lunatic asylum), or with the subscribers to some lunatic asylum theretofore established by voluntary subscription, in erecting or providing an asylum for the pauper lunatics of such county or borough; and that if the justices of any county or borough having no asylum for the pauper lunatics thereof shall not, within the period of three years from the passing of this act, have erected or provided, or united in or commenced erecting or providing, an asylum for the pauper lunatics thereof as aforesaid, it shall be lawful for one of Her Majesty's Principal Secretaries of State to require the justices of such county or borough to erect or provide, or unite in erecting or providing, such an asylum for the purpose aforesaid as Her Majesty's said Principal Secretary of State shall think fit, and

Justices of the
peace of every
county and
borough not
having a lunatic
asylum to pro-
vide one.

8 & 9 Vict. c. 126. such justices shall thereupon erect or provide, or unite in erecting or providing, such asylum accordingly.

Committee of Justices.

The justices of every county and the recorder of every borough not having a lunatic asylum to give notice on or before the sessions next after the 20th of December, 1815, of their intention to appoint a committee to superintend the providing of an asylum.

III. That the justices of every county and the recorder of every borough which has no asylum for the pauper lunatics thereof shall, on or before the general or quarter sessions for each county or borough next after the twentieth day of December one thousand eight hundred and forty-five (*a*), direct public notice to be given by the clerk of the peace of such county or borough, and such clerk of the peace of the county shall, within ten days thereafter, give notice in some newspaper or newspapers commonly circulated in such county, of the intention of the justices of the county to appoint at the then next succeeding general or quarter sessions, and such clerk of the peace of the borough shall in like manner give notice of the intention of the justices of the borough to appoint, at a special meeting to be fixed in such notice, within three months from the date thereof, a committee of justices either to superintend the erecting or providing of an asylum for the pauper lunatics of such county or borough alone, or to treat and enter into an agreement with the justices of some other county or counties, borough or boroughs, or with the subscribers to some lunatic asylum theretofore established by voluntary subscription, for the erecting or providing an asylum for the pauper lunatics of such county or borough.

Justices of every county and borough not having a lunatic asylum, to appoint a committee to superintend the providing one.

IV. That the justices of every county which has no asylum for the pauper lunatics thereof shall, at the then next general or quarter sessions for such county, after such notice shall have been given as aforesaid, and the justices of every borough which has no asylum for the pauper lunatics thereof, at the special meeting to be named as aforesaid, shall elect some justices to be a committee either to superintend the erecting or providing of an asylum for the pauper lunatics of such county or borough alone, or to treat and enter into an agreement with the committee or committees of justices of any other county or counties, borough or boroughs, or with the subscribers to any lunatic asylum theretofore established by voluntary subscription, for the erecting or providing of an asylum for the pauper lunatics of such county or borough: Provided always, that the committee of justices to be so appointed for erecting or providing an asylum for the sole use of any one county or borough shall not consist of less than seven justices, and that the committee of justices to be so appointed to treat with any other committee or committees or subscribers as aforesaid for erecting or providing an asylum as aforesaid shall not consist of more than fifteen nor of less than three justices: Provided also, that every borough in which, at the passing of this act, there shall not be six justices, besides a

Every borough not having six justices, besides

(*a*) 9 & 10 Vict. c. 84, s. 2.

recorder, shall, for the purposes of this act, be annexed to and be part of the county in which it is wholly situated, or in case it be not wholly situated in any one county shall be annexed to and be part of such one of the counties in which it is situate as her Majesty's principal Secretary of State for the Home Department shall, by writing under his hand and seal, direct; and the recorder of every such last-mentioned borough shall, at the general or quarter sessions next after the twentieth day of December in every year, nominate and appoint two of the justices of such borough to be members of the committee of justices of the county to which such borough is hereby or shall be annexed, in addition to the members of the committee for such county; and the committee of justices of every county to which any borough is hereby or shall be annexed as aforesaid shall from time to time fix the sum to be contributed by such borough towards the expenses of and incident to the erecting, providing, and maintaining the asylum of such county according to the comparative population of such borough and county as stated in the then last returns made of the same under the authority of Parliament, and give notice thereof in writing to the treasurer of such borough; and such sum shall be raised by a borough rate to be made by the council of the borough, in like manner as is directed by an act passed in the session holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," or out of the borough fund if the council shall think fit, and shall be paid by the treasurer of the borough to the treasurer of the asylum: Provided also, that where the subscribers to any asylum established by voluntary subscriptions enter into any agreement with the justices of any county or borough under this act, nothing in this act contained shall prevent the reception into the asylum provided by such subscribers and such justices under such agreement, or the discharge therefrom, of so many of any lunatics, other than pauper lunatics, as might have been received into the asylum so established by voluntary subscription if this act had not been passed.

V. That it shall be lawful for the major part of the subscribers to any lunatic asylum supported by voluntary subscriptions already established, present at any meeting of subscribers to the same, which shall be called together by advertisement in a newspaper commonly circulated in the place where such asylum is situate, for the express purpose of making such election and appointment, to elect and appoint any number of subscribers, not exceeding five, to form a committee to treat and enter into an agreement with the committee or committees of justices of any county or counties, borough or boroughs, elected or appointed as aforesaid, to unite such asylum supported by voluntary subscriptions with an asylum for such county or borough, counties or boroughs, under the provisions and for the purposes of this act.

8 & 9 Vict. c. 126.

the recorder, to be annexed to the county or one of the counties in which it is situate, for the purposes of this act.

5 & 6 Wm. 4, c. 76.

Proviso for asylums established by voluntary contributions.

Subscribers to any lunatic asylum authorised to appoint a committee to treat with committee of justices for uniting such asylum with a county or borough asylum.

8 & 9 Vict. c. 126.

Agreement for Union.

Committees of justices and subscribers, if they unite, to enter into an agreement in the form in schedule (A).

VI. That when two or more committees of justices, so elected or appointed as aforesaid, shall agree to unite, either together or together and with any committee of such subscribers as aforesaid, for the purposes of this act, and where any one committee of justices, so elected or appointed as aforesaid, shall agree to unite with any committee of such subscribers as aforesaid, for the purposes of this act, an agreement shall be entered into and signed by the said several committees, or the major part of such committees respectively, in the form or to the effect set forth in schedule (A.) hereunto annexed; and such agreement, when signed by the major part of each or every such committee (and not before), shall be binding upon the county or counties, borough or boroughs, and subscribers, for or on behalf of which or whom the committees so signing such agreement shall have been respectively elected or appointed; and every such agreement shall specify the proportion in which the expenses necessary for carrying into execution the powers and purposes of this act shall be charged and assessed upon the several counties and boroughs and subscribers so uniting, such proportions as regards the several counties and boroughs, to be calculated by the said committees of justices in proportion to the population of the said several counties and boroughs as stated in the then last returns made of the same under the authority of Parliament, and, as regards the subscribers, to be calculated by the committee of subscribers; and every such agreement shall also specify the numbers of every committee of the county or counties, borough or boroughs, or subscribers, so uniting.

Committee of justices to report and deliver a copy of the agreement at the then next sessions.

VII. That whensoever any agreement shall have been so entered into and signed as aforesaid, the committee for each county and borough so uniting shall report the same to the justices of such county or the recorder of such borough at the then next general or quarter sessions, and shall then and there deliver into Court a duplicate of the said agreement, to be by the clerk of the peace of the same county or borough entered among the records thereof.

Justices of every county and borough having a lunatic asylum, but of insufficient accommodation, to provide an additional asylum or accommodation.

VIII. That the justices of every county and borough which has or shall have an asylum for the pauper lunatics thereof, but which has or shall have more pauper lunatics than such asylum will properly accommodate, and the justices of every county or borough which has or shall have an asylum which any one of her Majesty's principal Secretaries of State shall, by writing under his hand and seal, declare to be inadequate or unfit for the proper accommodation of the pauper lunatics of such county or borough, shall erect or provide additional buildings or an additional asylum for the pauper lunatics of such county or borough as the said Secretary of State shall direct: Provided always, that in case the asylum so declared inadequate or unfit as aforesaid shall be

a workhouse, it shall be lawful for the said Secretary of State, if ^{8 & 9 Vict. c. 126.} he shall think fit, upon the application in writing of the guardians or overseers of the union or parish to whom such workhouse shall belong, or of the major part of them, to direct such additional buildings or such additional asylum as aforesaid to be erected or provided by the said guardians or overseers (*b*); and every such workhouse which shall be so added to, and every such additional asylum which shall be erected or provided as last aforesaid, shall be and be deemed to be a lunatic asylum for such county or borough, and shall be included in and shall be subject to the provisions of this act; and it shall be lawful for the guardians or overseers to whom such direction shall be given, and they are hereby authorised, to apply, or to assess, raise, and levy such sum or sums of money as may be necessary for the purposes aforesaid from such funds, or by such powers, ways, and means, as are now by law belonging or given to or vested in such guardians or overseers specially, or in churchwardens or overseers of the poor generally, in relation to the purchase or hiring of lands, or the purchase, building, hiring, enlarging, or maintaining of workhouses: Provided also, that it shall be lawful for the justices of any such county, in general or quarter sessions, or of any borough, with the consent of the Poor Law Commissioners for England and Wales, and of the guardians and overseers of the union or parish, to take and use a workhouse for the reception of all or any of the pauper lunatics of such county or borough who may be chronic lunatics; and every workhouse so taken and used shall thereafter cease to be a workhouse for other purposes whilst so used, and shall be and be deemed for all the purposes of this act to be a lunatic asylum of such county or borough, and to be included in the provisions of this act.

Union with Counties having Asylums.

IX. That it shall be lawful for the committee of visitors for the time being of any asylum already erected for any county or borough or united counties or boroughs, and also for the committee of visitors for the time being of any asylum already erected for any county or borough or united counties or boroughs, jointly with any voluntary subscribers, to unite under the powers of this act, and in manner hereinafter directed, and either by way of purchase or by payment of any sum in the nature of rent, or otherwise, with any other county or borough, counties or boroughs, or any voluntary subscribers, for the joint use of any asylum already erected, or for the erecting or providing of additional buildings or an additional asylum for the pauper lunatics of such county or counties, borough or boroughs; and in every such case if the said existing asylum shall not afterwards be used by the united county or borough, counties or

Power for the visitors of existing county and borough asylums to unite, under the powers of this act, with the visitors of any other county or borough.

8 & 9 Vict. c. 126.

boroughs jointly, the expenses of and incident to the erecting, providing, and maintaining the said additional buildings or additional asylum shall be charged and assessed upon the several counties, boroughs, and subscribers so uniting as herein-before provided in the case of counties and boroughs none of which have an asylum; but if the said existing asylum shall afterwards be used by the united county or borough, counties or boroughs jointly, the committees of visitors of the several counties, boroughs, or subscribers, as the case may be, which shall be so united shall fix the sum to be paid by the county or borough, or each of the counties and boroughs, not then having any asylum, towards the expenses then already occurred in erecting or providing such asylum as aforesaid, and the same shall be paid by every such county or borough to the treasurer of such asylum, and shall be raised by such county or borough in the same manner as other monies are hereby directed to be raised by counties and boroughs respectively for the purposes of this act, and shall be applied by the committee of visitors of the asylum in such manner as such committee shall think fit, according to the provisions and for carrying into effect the purposes of this act; and in every case of any such union as last aforesaid an agreement shall be entered into according to the form or to the effect set forth in the said schedule (A.), and shall contain the same specifications as herein-before required in the case of an agreement for an union by counties and boroughs none of which has an asylum.

Exemption of Boroughs from Obligation.

Boroughs now contributing to a county asylum to be deemed to have an asylum.

Any borough, upon notice, may separate itself from a county asylum.

X. That every borough which is situate within a county having an asylum for pauper lunatics, and which under any previous act now contributes to such asylum, shall, for the purposes herein-before mentioned, be considered as having an asylum for the pauper lunatics of the said borough: Provided always, that it shall be lawful for any such borough at any time hereafter, upon giving six calendar months notice in writing, under the hand of the town clerk, in pursuance of a resolution of the council of such borough, to the clerk of the peace of the county, to separate itself, so far as it relates to the establishment of a lunatic asylum for such county and the maintenance of lunatics therein, from the county in which such borough may be situated, and from and after the expiration of such notice such borough shall, for the purposes of this act, be deemed a borough not having an asylum for the pauper lunatics thereof: Provided also, that from and after the expiration of such notice, and until the withdrawal from such county asylum of all the lunatics from or belonging to any such borough, such borough shall be liable to contribute towards the expenses of such asylum, in the same manner and to the same extent as such borough would have been liable to contribute if notice of separation had not been given;

and from and after the expiration of such notice, and the withdrawal from such county asylum of all lunatics from or belonging to such borough, then and in such case such borough shall not be liable to pay or contribute towards the expense of the establishment of such asylum, or the maintenance of lunatics therein, save only such proportion of the expenses of maintaining lunatics chargeable to the county in which such borough is situate which would have been chargeable upon such borough in case it had not so separated from the county.

8 & 9 Vict. c. 126.

Appointment and Duties of Visitors.

XI. That in every county and borough for which an asylum has been already provided the present committee of visiting justices, or of visiting justices and subscribers, or of visitors thereof, shall continue to be the committee of visiting justices or visitors thereof until the general or quarter sessions which shall be held next after the twentieth day of December in the year one thousand eight hundred and forty-five.

Present visitors to remain in office till the sessions next after the 20th December, 1845.

XII. That at the general or quarter sessions to be held next after the twentieth day of December in every year the justices of every county, and at a special meeting to be held within twenty days after the twentieth day of December in every year the justices of every borough, having for the time being an asylum (whether already erected or provided, or in course of erection, or hereafter to be erected or provided, or in course of being erected or provided) either for the sole use of such county or borough, or otherwise as aforesaid, shall elect some justices of such county or borough to be a committee on behalf of such county or borough for the purposes of the said asylum, during the year then next ensuing the election; and in case of the incapacity, resignation, or death of any member of the said committee, the said justices of every county at any general or quarter sessions for such county, or the justices of every borough at a special meeting, may elect a justice to be a member of such committee for the then remainder of the current year in the place of the member who shall have so become incapable, resigned, or died; and in the month of January in every year the subscribers to every lunatic asylum already erected by voluntary subscription, and which shall have been then united or be intended to unite with any county or counties, borough or boroughs, as aforesaid, under the provisions of any former or of this present act, or the majority of such subscribers present at a meeting of which notice shall have been given by public advertisement in some newspaper circulated within the place in which such lunatic asylum shall be situated, shall elect some of such subscribers to be a committee on behalf of such subscribers, for the purposes of such asylum, during the year then next ensuing; and in case of the incapacity, resignation, or death of any member of the said committee, a majority of the said sub-

For the appointment of future visitors.

8 & 9 Vict. c. 126.

scribers present at any meeting called as aforesaid may elect a subscriber to be a member of such committee for the then remainder of the current year in the place of the member who shall have so become incapable, resigned, or died ; and in every case in which there shall be or be intended to be an asylum for the sole use of any one county or borough, the committee of justices elected for such one county or borough as aforesaid shall be the committee of justices for the visitation, management, providing, and erecting of such asylum, house, or place, and shall be called the " Committee of Visitors ;" and in every case in which any one or more county or counties, borough or boroughs, shall be united together, or with any subscribers as aforesaid, or together, and also with any subscribers as aforesaid, the said committees of such county or counties, borough or boroughs, and subscribers, as the case may be, shall form and be one committee for the visitation, management, providing, and erecting of the asylum for such county or counties, borough or boroughs, and subscribers, as the case may be, and shall be called the " Committee of Visitors ;" Provided always, that the number of justices to be elected to be the committee of visitors of any county or borough having an asylum, house, or place for its sole use shall not be less than seven, and that the number of the justices of every county and borough, and of every body of subscribers, heretofore united as aforesaid, to be elected to be the committee of visitors, shall be the number specified in the agreement entered into for effecting or regulating such union as aforesaid ; and that the number of the justices of every county and borough, and of every body of subscribers, which shall be hereafter united as aforesaid, to be elected to be the committee of visitors, shall be the number specified in the agreement entered into for effecting such union, but so that the number of justices for any county to be hereafter united shall not be more than fifteen nor less than seven, or for any borough more than seven nor less than three.

Former visitors to remain in office in case of the omission of an election, or of filling up a vacancy.

XIII. That if any justices or subscribers as aforesaid shall in any year neglect or omit to make such election, or to fill up any vacancy which may have occurred as aforesaid, or there shall be any delay in making or filling up the same, then the committee of visiting justices, or visitors lastly before appointed, or such of them as shall continue to act, shall be deemed and taken to be the committee of visiting justices or visitors for the purposes aforesaid until such election as aforesaid shall have been made or such vacancy shall have been filled up.

Meetings of Visitors.

Meetings of visitors.

XIV. That the several persons who shall at first and at each general annual election be elected members of any committee of visitors shall, within one calendar month after their election, assemble at some convenient place, to be named in a notice

previously given by two or more of such visitors or their clerk to the several members of such committee, and that the said visitors may adjourn the said meeting from time to time or from place to place, and meet where and as often as they shall think necessary; and the said visitors shall at their first meeting after their election elect one of their members to be chairman for the year, who shall preside at all meetings at which he shall be present; and in case of the absence of the chairman from any meeting the members of the committee then present shall elect one of such members to be chairman for the meeting, who shall preside at the meeting; and to constitute a meeting of a committee there shall be present not less than three members thereof, except for adjournment, which may be made by less than three; and every question shall be decided by a majority of votes (the chairman, whether permanent or temporary, having a vote), and in the event of an equality of votes on any question the chairman for the time being shall have an additional or casting vote; and every such committee of visitors shall appoint a clerk to such visitors for the purposes of this act, at such salary or remuneration as such visitors shall think fit, and from time to time, if and when they shall think fit, remove such clerk or any future clerk, and in any such case, and in case of the death or resignation of any such clerk, and as often as the same shall occur, appoint a new clerk.

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Every committee to elect a chairman;

Number of members to constitute a meeting; Questions how to be decided.

Visitors to appoint a clerk.

XV. That if any committee of visitors shall neglect to adjourn any meeting of such visitors, and whenever any circumstance shall render the meeting of such committee necessary or convenient before the time to which their meeting may have been last adjourned, and in any other case in which a meeting of such committee shall be desirable, it shall be lawful for the chairman of the committee, or any two of the visitors, or the clerk of such visitors, to convene a new meeting by a circular letter to each visitor, informing him of the time and place of such meeting, ten days at least before the same shall be held.

The chairman, or two visitors, or the clerk, may convene meetings of visitors in certain cases.

XVI. That every committee of visitors may sue and be sued in the name of their clerk; and that no action which may be brought or commenced by or against any such committee of visitors in the name of their clerk shall abate or be discontinued by the death or removal of such clerk, but the clerk for the time being to the visitors shall always be deemed plaintiff or defendant in such action, as the case shall be.

Visitors may sue and be sued in the name of their clerk, whose removal shall not abate actions.

Visitors to provide Asylums.

XVII. That the committee of visitors for any county or borough, counties or boroughs, for which an asylum or an additional asylum, or additional accommodation for pauper lunatics shall for the time being be required, shall, subject as hereinafter mentioned, procure, examine, and determine on plans and estimates of and contract for the purchase of lands and build-

When an asylum or additional asylum or accommodation is required, the visitors to procure and determine on plans and esti-

8 & 9 Vict. c. 126.

mates, and to contract for the purchase of lands and buildings, and for erecting, &c., the necessary buildings.

Contractors to give security. Contracts and orders to be entered in a book to be deposited, and to be open to inspection.

Lands purchased to be conveyed in trust for the purposes of this act.

Visitors to report.

ings (and in the case of buildings either with or without any fittings-up and furniture belonging thereto), and for building, erecting, altering, improving, restoring, furnishing, and completing an asylum or additional asylum or additional accommodation for the pauper lunatics of the county or borough, counties or boroughs, for which such visitors, or such of them as shall not be elected by subscribers as aforesaid, shall be appointed, or for those of the same pauper lunatics for whom there shall not be proper accommodation in any existing asylum, or, with the consent of the said poor law commissioners, and of the guardians or overseers of the parish or union, for adapting any workhouse for all or any of the same lunatics who may be chronic lunatics; and, subject as aforesaid, shall also contract for making, laying out, and completing the yards, courts, outlets, grounds, lands, and appurtenances to such asylum or additional asylum or workhouse, and also from time to time to purchase any land or buildings for the purpose of enlarging or improving any such asylum, workhouse, or the yards, courts, outlets, grounds, land, and appurtenances thereto; and every contractor shall give to the clerk to such visitors sufficient security for the due performance of the contract; and every such contract, and all orders relating thereto, shall be entered in a book to be kept by the clerk to such visitors; and when such asylum or workhouse and appurtenances, or (as the case may be) the additions to or alterations thereof, shall be declared to be completed, then such book shall be deposited and kept among the records of the county or borough, or, in the case of two or more counties or boroughs having united for the purposes of such contract, among the records of such one of the united counties or boroughs as shall have paid the largest proportion of the expenses of such contract; and every such book may be inspected at all reasonable times by any person contributing to the rates of such county or counties, borough or boroughs respectively, and also if any part of such expenses has been paid by voluntary subscriptions, by any of such voluntary subscribers; and a copy of every such book shall be kept at the asylum or additional asylum which shall have been erected or provided; and all lands and buildings so to be purchased as aforesaid shall be conveyed to such person or persons as the visitors by whom the same shall be purchased shall think fit, in trust for the purposes of this act: provided always, that the said visitors shall from time to time make their report to the general or quarter sessions of the county or borough, counties or boroughs, for which they, or such of them as shall not have been elected by subscribers as aforesaid, shall be elected, of the several plans, estimates, contracts, and purchases which shall have been agreed upon, and of the sum or sums of money necessary to be raised and levied for defraying the purchase monies and expenses thereof on the county or borough, or in

the case of two or more counties or boroughs having united for such purposes, on each or every of such counties or boroughs, which plans, estimates, contracts, and purchases shall be subject to the approbation of the court or courts of general or quarter sessions of such county or counties, and of the justices of such borough or boroughs, before the same shall be completed or carried into execution. 8 & 9 Vict. c. 126.

XVIII. That it shall be lawful for any committee of visitors to purchase and take a conveyance for the purposes of this act from any person having absolute power to sell and convey, independently of this act, any buildings, lands, or hereditaments, in consideration of a yearly rent-charge or annual sum to be limited to such person, his heirs and assigns, or as he or they shall direct, out of the buildings, lands, or hereditaments to be purchased, and which shall be conveyed to such committee of visitors, subject thereto, and to the usual powers of distress and entry for securing the same. Power to visitors to purchase in consideration of a rent reserved.

XIX. That it shall be lawful for any committee of visitors, instead of purchasing any buildings, lands, or hereditaments which they are hereby authorised to purchase, to take a lease thereof for any absolute term of not less than sixty years at such annual rent and under such covenants as the said committee of visitors shall think fit. Power for visitors to take a lease at a rent.

Conveyance by Persons under Disabilities.

XX. That it shall be lawful for the commissioners of her Majesty's woods, forests, and land revenues, by and with the consent in writing of the Lord High Treasurer, or the commissioners of her Majesty's treasury, or any three or more of them, and for her Majesty, by grant signed by the Chancellor of the duchy of Lancaster, and for the council of the duchy of Cornwall, by the Lord Warden of the Stannaries, in manner required by law, and for the guardians and overseers of the poor of any parish or union of parishes under the direction and with the approbation of the Poor Law Commissioners for England and Wales, and for the visitors or trustees of any building now used or hereafter to be used as an asylum for pauper lunatics, or of any land held therewith, and for any lay or ecclesiastical corporation, aggregate or sole, and for any feoffees or trustees to charitable or other uses, and for any person beneficially seised or entitled in possession as tenant in fee simple, or in fee tail, general or special, or for his own life, or for years determinable on his own life (such estate for life or years not being subject to any rent), or for any term of years in gross, whereof not less than four hundred shall be unexpired, and subject to no equity of redemption or rent, except a nominal rent, and for any married woman entitled or interested as aforesaid to her separate use, whether with or without any restriction as to anticipation, and for the guardian, trustee, husband, or committee of any Power for incapacitated persons to convey and exchange.

8 & 9 Vict. c. 126.

person so seised or entitled, who shall be an infant, married woman not separately entitled, lunatic, or under any other disability, to dispose of, by way of absolute sale, or in exchange for any buildings, lands, or other hereditaments, any lands, buildings, or other hereditaments for the purpose of the same being used or converted into an asylum for the pauper lunatics or any of the pauper lunatics of any county or borough, counties or boroughs, either alone or together with any other lunatics, or being used as the site of any such asylum, or of being occupied therewith, or for any other purpose relating to the custody, accommodation, or employment of pauper lunatics to be received into such asylum, which the visitors thereof may approve of, with the rights, easements, and appurtenances, and to convey the same and the fee simple and inheritance thereof unto such person or persons as shall be named by the said committee of visitors, and in such manner as the said committee of visitors may direct, and to accept or give any monies by way of equality of exchange.

Application of money on a sale by or an exchange with any incapacitated person.

XXI. That all money which shall be agreed to be paid to any corporation, or to any trustee, guardian, or committee for or on behalf of any infant, ward, lunatic, married woman, or other person under disability, or to any person not having power to sell, except under the provisions hereinbefore contained, for the purchase or equality of exchange of hereditaments as aforesaid, shall, in case the same shall exceed the sum of fifty pounds, and there shall be no person capable of giving a sufficient discharge for the same, be paid by the committee of visitors into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account to the credit of the parties who shall be so interested in the said hereditaments, describing them, subject to the order of the said Court of Chancery, which said Court, on the petition of or motion on behalf of any corporation or person making any claim to any such money, is hereby empowered summarily to order the investment of such money in the purchase of real estates to be settled to the same uses and upon the same trusts as the lands so sold were previously subject to, or in the public funds, and the distribution of the rents and dividends thereof respectively, according to the respective interests of the claimants thereof, and to make such other order in the premises as to the Court shall seem reasonable; and the cashier of the Bank of England who shall receive such money shall give a receipt to the party paying the same, specifying for what the same is received, which receipt shall be to all intents and purposes a sufficient discharge; but such money, in case the same shall not exceed the sum of fifty pounds, shall be paid to the party or parties by whom the sale or exchange shall be made, for his and their own absolute benefit.

Persons in pos-

XXII. That in case of any doubt or question of title to any

money paid into the Bank of England by virtue of this act, or the securities on which the same may be invested, or the dividends or interest thereof, the corporation or person who shall have been in the possession of such hereditaments, interest, or incumbrances at the time of such purchase or exchange, and persons claiming under them, shall be deemed and taken to be lawfully entitled to such hereditaments, interests, or incumbrances until the contrary shall be shown to the satisfaction of the said Court of Chancery, and the securities and principal and interest monies shall be applied and disposed of accordingly.

8 & 9 Vict. c. 126.

session to be deemed entitled till the contrary be shown.

XXIII. That in case of such purchase or exchange, payment into the Bank of England, and application to the Court of Chancery as aforesaid, it shall be lawful for the said Court to order the expenses (a) attending such purchase or exchange, payment, and application, or any part thereof, to be paid by the said visitors, who shall accordingly pay the same when and as the said Court shall direct, and the money so paid shall be deemed part of the expenses of such purchase or exchange, and be paid accordingly as hereinbefore is provided.

Court of Chancery may order expenses to be paid by visitors.

Enfranchisement of Copyhold Site.

XXIV. That the provisions hereinbefore contained shall apply to lands, buildings, and other hereditaments of copyhold or customary tenure, and that whenever any contract shall be entered into by any visitors respecting any lands, buildings, or other hereditaments of copyhold or customary tenure, it shall be lawful for such visitors to direct that the actual value of such lands, buildings, or other hereditaments (allowing in such valuation for any fine, heriot, or customary due, payment, or rent, or any service capable of being valued in respect of such lands or buildings or other hereditaments), and also the value of such lands, buildings, or other hereditaments, considered as lands, buildings, or hereditaments held in fee simple, free from incumbrances, shall be ascertained by such means as they shall think fit, and that the difference in such values, when so ascertained, shall be paid to or invested for the use and benefit of the lord of the manor of which such lands or buildings or other hereditaments shall be parcel, or such other person as would be entitled to the fines payable upon death or alienation of the same, or to such heriot, dues, payments, rent, or service respectively; and upon and from the making of such payment or investment such lands or buildings or other hereditaments shall thenceforth be deemed enfranchised, and for ever discharged from every fine, heriot, due, payment, rent, suit, or service, and shall thenceforth be and remain of the tenure of free and common soccage: Pro-

Provisions for the enfranchisement of copyhold and customary hereditaments.

(a) See *ex parte Earl of Albemarle, in re Gwiltcross Union*, 7 Law J. (N. S.) Exch. 63, 2 Jur. 406.

8 & 9 Vict. c. 126. vided always, that if any such lord of the manor or other person be under any legal disability, the powers and provisions hereinbefore contained enabling persons under disability to convey or otherwise dispose of and deal with property, and for the payment and application of the purchase money, shall apply to such lord of the manor or other person, and the said difference in value hereinbefore directed to be paid to him or invested for his use and benefit: Provided also, that if such lord of the manor or other person be dissatisfied with the result of such valuations, and shall, within seven days after tender made to him of the amount of the said difference in value, or after notice left at his place or last known place of residence, or with his known agent, of such amount being ready to be paid to him or invested as aforesaid, send notice by the post to the said visitors of such dissatisfaction, it shall be lawful for the visitors to direct further valuations to be made, at or within such period as they may see fit, by two valuers, one to be named by the visitors and the other by such lord of the manor or other person, which two persons so named shall, previously to their entering on their valuations, name a third valuer or umpire to be referred to in case they disagree, and the award of such two first-named valuers, or, if they disagree, of their umpire, shall be binding on all parties; and on payment or investment, under the provisions of this act, of the difference of such last-mentioned valuations, such lands, buildings, and other hereditaments shall thenceforth be deemed enfranchised and discharged in manner aforesaid, and be and remain of the tenure of free and common soccage; and when and so soon as any such enfranchisement as aforesaid shall have been made it shall be lawful for the steward of the manor whereof such lands, buildings, or hereditaments were parcel, and he is hereby required, on the receipt of a certificate under the hand and seal of the clerk of the said visitors of such enfranchisement having been effected, to enter such certificate on the rolls or books of the said manor, and to furnish a copy of such entry, written on parchment, to the said visitors or their clerk, or to such person or persons as they or he may direct, and to certify the same to be a true copy under his hand; and such certificate, or a copy thereof, under the hand and seal of the clerk of the visitors, shall thenceforth be evidence of such enfranchisement.

Assessment on Asylum.

Assessment to rates and taxes not to be increased after purchases for the purposes of this or any former act.

XXV. That in all future rates, taxes, and levies to be made for any parish or place in which any lands, buildings, or hereditaments already purchased or to be purchased, under the provisions of this or any former act, for the purposes of any asylum, shall be situate, such land, buildings, or hereditaments, with or without any buildings or additional building to be erected thereon, shall not be assessed to any such rates, taxes, or levies at a higher value and more improved rent than the value or

rent at which the same were assessed at the time of such purchase, nor shall any building which under this or any former act has been or shall be erected or purchased for the purposes of an asylum be assessed to any window tax (a). 8 & 9 Vict. c. 126.

Repairs of Asylums.

XXVI. That the committee of visitors of every asylum may, of their own authority, from time to time order all such ordinary repairs as may be necessary for such asylum, and if such asylum shall belong to one county or borough only they shall cause the expense of such repairs to be paid by making an order upon the treasurer of such county or borough for the payment thereof, but if such asylum shall belong to one county or borough or to two or more counties or boroughs united together with or separate from any voluntary subscribers, they shall apportion the expense of such repairs, or so much thereof as shall not be raised by voluntary subscription, between or among such counties or boroughs respectively, in respect to any asylum already erected in the proportion in which each county and borough has contributed to the erection thereof, and in respect to any asylum to be hereafter erected in the same proportions as hereinbefore directed with regard to erecting or providing such asylum, and shall cause the proportion of each county or borough to be paid by making an order upon the treasurer thereof for the payment of the proportion to be paid by such county or borough, and

Visitors to order
all ordinary re-
pairs of asylums.

(a) In order to constitute such an occupation of property as to make it rateable to the poor, it is necessary not only that the person should have possession, but that he should have such a control and dominion over the subject, as implies freedom from any paramount occupation, a direct interference by a superior with his domestic arrangements and internal management; such as a farmer enjoys over his farm, and the master of a family over his house. It was therefore held, that servants attending an hospital for the reception of lunatics, much less the poor persons who are the objects of the charity, are not such occupiers as are contemplated by the statute 43 Eliz. c. 2; *Rex v. St. Luke's Hospital*, 2 Burr. 1053; 1 Nolan's Poor Laws, 177. See 9 Geo 4, c. 40, s. 29.

Hospitals are exempted from property tax, but not lunatic asylums, by 5 & 6 Vict. c. 35, s. 61.

Lands were purchased by voluntary contribution, and conveyed to trustees for the purpose of erecting thereon a *lunatic asylum*, and for such other purposes relative thereto as should be determined by the subscribers. The asylum was originally designed for parish paupers, or other indigent persons, but the funds being insufficient, a limited number of affluent persons were afterwards admitted at certain rates of payment, in proportion to their abilities. From this and other sources of revenue the trustees, after paying all the expenses of the establishment, had accumulated, in five years, profits to the amount of 2000*l.*, part of which had been laid out in buildings and purchases for the institution, and part continued to accumulate. All benefactors of 20*l.* or upwards were governors, and they exercised the entire control over the asylum and its funds. The trustees derived no personal benefit from the institution. It was held, that, as the building produced a profit, it was rateable; and that the trustees, who were the owners, and in actual receipt of the profits, were the persons liable to be rated; *Rex v. Inhabitants of St. Giles, in York*, 3 B. & Ad. 573.

8 & 9 Vict. c. 126.

No order for payment of money exceeding 400*l.* to be made unless notice has been given of the meeting.

every such treasurer shall immediately discharge the same out of any money of such county or borough then in his hands, or which may thereafter come to his hands, not specifically appropriated to any other purpose, and the same may be recovered from him for the benefit of such asylum by the treasurer or clerk thereof, together with all costs and expenses, by an action in any of her Majesty's Courts at Westminster: Provided always, nevertheless, that no order for any repairs, or for the payment of any money which shall exceed the sum of four hundred pounds, shall be made, unless due notice of the meeting at which the same shall be ordered shall have been previously given according to the rules and regulations made by the visitors for the time being, nor unless three visitors shall concur in and sign such order.

Provisions as to Providing Asylums.

To prevent exclusion from asylums of curable lunatics, separate provision to be made for chronic lunatics.

XXVII. That in the erecting and providing of every asylum hereafter to be erected or provided for the reception of pauper lunatics, and also in enlarging the same or any asylum already erected, regard shall be had to the number of lunatics to be provided for therein who shall be or be deemed curable or dangerous; and in order to prevent such lunatics being excluded from admission into such asylum by reason of the admission or accumulation therein of chronic or incurable lunatics, some separate or additional building shall be provided for chronic or incurable lunatics whenever by reason of the increase in numbers of lunatics the asylum shall be insufficient for the accommodation of all lunatics entitled to be received therein; and in order to secure the immediate admission into every such asylum of all lunatics deemed curable or dangerous a sufficient number of such chronic or incurable lunatics shall from time to time be transferred from such asylum to such separate or additional building to be provided as aforesaid.

All proposals, agreements, and plans to be submitted to the commissioners in lunacy, and all contracts and estimates to be approved of by the Secretary of State.

XXVIII. That every committee of visitors shall submit all proposals and agreements for uniting counties and boroughs and other asylums for the purposes of this act, and all proposals for building or providing asylums, or the buildings, yards, outlets, or appurtenances thereto, or additional accommodation for pauper lunatics, and all contracts and all plans which may be intended to be adopted for such asylums, accommodation, and premises, to the Commissioners in Lunacy, who shall make such inquiries in reference thereto, and to the lunatics to be provided for, as they shall deem proper, and shall report thereon in writing to one of her Majesty's principal Secretaries of State; and the estimates of the costs and expenses of carrying into execution such contracts for any of the purposes of this act, in reference to the purchase of land, or the building or providing any asylum or additional asylum or accommodation for pauper lunatics, shall be submitted to her Majesty's said Secretary of

State ; and no such proposals, agreements, contracts, estimates, or plans shall be accepted, executed, or carried into effect until the same shall be approved of by the said Secretary of State by writing under his hand and seal. 8 & 9 Vict. c. 126.

XXIX. That it shall be lawful for every committee of visitors to contract with the proprietor of any house for the time being licensed for the reception of lunatics for the care and maintenance of the whole or of a portion of the pauper lunatics of the county or counties, borough or boroughs, or any of them respectively, for which such committee shall be acting, or for the use and occupation of all or any part of the licensed house and premises of such proprietor, at such sum, either in gross or by way of annual or other periodical payment or rent, and under and subject to such terms, stipulations, and conditions, as such visitors shall think fit ; and every such sum shall be paid out of the same monies or funds, and in the same manner, as the monies which would be paid for the maintenance of such lunatics if they were maintained in an asylum provided by such county or counties, borough or boroughs, under the provisions of this or some former act of Parliament *(a)*: Provided always, that every such last-mentioned contract shall be submitted to the Commissioners in Lunacy, and shall be approved by one of her Majesty's principal Secretaries of State by writing under his hand and seal, and that no such contract shall be made for any longer period than for the term of five years, and that every such contract shall be made to determine on such house ceasing to be duly licensed for the reception of lunatics : Provided also, that no such contract shall, during the term for which it shall be made, exempt any county or borough from the duty and obligation of erecting or providing, or uniting in erecting or providing, an asylum or additional asylum as required by this act : Provided also, that every licensed house with the proprietor of which any committee shall so contract as last aforesaid shall be subject to the visitation required by this act, and to all rules and regulations which shall from time to time be made for the management thereof by the committee of visitors with whom any such contract shall be made, and also subject to such visitations, rules, and regulations as the same licensed house would have been subject to if no such contract had been made *(b)*.

Visitors empowered to contract with the owners of licensed houses for the care and maintenance of pauper lunatics, subject to the approval of the Secretary of State.

Such contract not to exempt any county or borough from the obligation of providing an asylum.

XXX. That it shall be lawful for every committee of visitors, with the consent of the majority of the visitors of each county and borough which is united, and with the previous consent of one of her Majesty's principal Secretaries of State under his hand and seal, to determine and dissolve any union of any counties or boroughs, either together, or together and with any subscribers, whether such union shall have been formed under this act, or under the act hereby repealed, or under any former act, and

Power for visitors to dissolve union &c.

(a) See 9 & 10 Vict. c. 84, s. 6.

(b) See 8 & 9 Vict. c. 100.

8 & 9 Vict. c. 126.

upon such dissolution, to divide and allot the lands, buildings, hereditaments, chattels, monies, and effects of or belonging to such union between or among the county or counties, borough or boroughs, and subscribers, if any, between which or whom such union shall have existed, in the proportions in which they shall respectively have contributed thereto or shall be interested therein, or in such other proportions and manner as the said visitors, with the approbation of the said Secretary of State, shall think fit; and if on any such division or allotment there cannot be conveniently allotted to any county or borough or subscribers the proper proportion of such county, borough, or subscribers in the lands, buildings, hereditaments, chattels, monies, and effects of such union, there shall be paid to such county, borough, or subscribers such sum of money as the said visitors, with the approbation of the said Secretary of State, may direct, in full or in part satisfaction, as the case may require, of the aforesaid proportion of such county, borough, or subscribers; and every such sum of money shall be raised by the county or counties, borough or boroughs, to or between or among which the lands, buildings, hereditaments, monies, chattels, and effects of the said union shall be allotted (if more than one in such shares as the said visitors, with the approbation of the said Secretary of State, shall think fit), in the same manner and by the same means as other monies are appointed to be raised by counties or boroughs for the purposes of this act.

Power for visitors, with consent of the Secretary of State, to sell lands and buildings.

XXXI. That it shall be lawful for every committee of visitors, with the previous consent of one of her Majesty's principal Secretaries of State under his hand and seal, to sell, either by public auction or private contract, and subject to any conditions, any houses, buildings, and lands, or parts of houses, buildings, or lands, which shall have belonged to and been used as or together with an asylum by the county or counties, borough or boroughs, and subscribers (if any), by whom respectively such committee shall have been elected as aforesaid, or any of the same counties, boroughs, or subscribers respectively; and every conveyance of such houses, buildings, and lands which shall be executed by the persons in whom the same shall then be vested as trustees, or by any three of the members of the committee of visitors who shall sell the same, shall be effectual to convey the same, for all the estate or interest then vested in such trustees, to the purchasers thereof respectively; and the receipt of any three of the committee of visitors who shall sell the same for the purchase monies shall be a sufficient discharge for the same; and the monies which shall be received from any such sale, in case the same shall be made by a committee of visitors of any one county or borough alone, shall be paid to the said committee of visitors, and be applied in carrying into execution the powers and purposes of this act, or to the treasurer of such county or borough, and be applied for the general purposes

Application of purchase monies.

thereof, or otherwise as the justices of such county or borough shall, at some general or quarter sessions after the payment thereof, direct; but in case the said sale shall be made by a committee of visitors of any county or borough united with any other county or borough or counties or boroughs, or with any subscribers, the monies which shall be so received shall be paid to the treasurer of the county, borough, or subscribers to which or to whom the property sold shall have belonged, in case it shall have belonged to any one of them, or if the same shall have been the joint property of more than one county or borough, or of any county or counties, borough or boroughs, together with any subscribers, then to the respective treasurers of such county or counties, borough or boroughs, and subscribers, in the proportions in which they shall have been respectively interested in the property sold; and such monies shall be held and applied by every such treasurer, in the case of a county or borough, as part of the general rates or funds of such county or borough, and in the case of any subscribers, as the majority of such subscribers present at any meeting convened for that purpose shall direct.

XXXII. That no visitor shall have or take or be capable of having or taking any interest or concern whatsoever, either in his own name or in the name of any other person, in any contract or agreement to be made under the authority of this act, or in relation to the premises, or shall, for any design or plan he may deliver or produce, receive any benefit or emolument whatever.

No visitor to have any interest in any contract or agreement.

Fund for Cost of Asylum.

XXXIII. That in order to pay and defray the monies, costs, and expenses which shall be or shall become payable by any county or borough for any of the purposes of this act, or the said act hereby repealed, the justices of every such county, at any general or quarter sessions for the same, may and shall assess and tax a general county rate or rates upon such county, and may and shall fix a sum or rate to be contributed by all places whatsoever within such county, (other than any borough being within such county, or by this act for the purposes thereof annexed thereto,) and whether such places shall or shall not be liable to contribute to an ordinary county rate; and the council of every borough may and shall assess a general borough rate in the nature of a county rate upon such borough; and the said rates shall be collected, levied, and recovered in the same manner, and by the same powers, authorities, ways, and means, and under the same penalties, as any ordinary rate for such county or borough respectively may by law be collected, levied, and recovered; and the monies, costs, and expenses to be paid or contributed by any county or borough for the purposes of this act shall be paid by the treasurer of such county or borough, out of the rates aforesaid, to the treasurer of the asylum to which such county or borough shall, either alone or jointly, pay or contribute: Provided always, that it shall be lawful for the

Provisions for raising monies required for the purposes of this act by county and borough rates.

8 & 9 Vict. c. 126.

Power for justices of counties and councils of boroughs to raise money by mortgage of the rates.

town council of any borough, if they shall think fit, to direct that any monies which shall become payable for the purposes of this act, or any part thereof, shall be paid out of the borough fund of such borough, and such monies shall be paid by the treasurer of such borough out of such fund accordingly.

XXXIV. That when it shall appear by the report in writing under the hands of any two members of the committee of visitors, elected and appointed under this act or the said act hereby repealed, that the monies, costs, or expenses incurred or to be incurred or paid by any county or borough for carrying into effect any of the purposes of this act or the said act hereby repealed, and whether the same shall be wholly or only in part incurred, will exceed the sum of five thousand pounds, and in the case of any city, town, parish, place, or district by this act annexed to a county for the purposes hereof will exceed the sum of two thousand pounds, then and in such case it shall be lawful for the justices of every such county in general or quarter sessions assembled, or the major part of them, such major part not being less than five, and for the council of every such borough, as the case may be, from time to time to borrow and take up on mortgage of all or any of the rates to be made under the authority of this act for such county or borough, or on mortgage of all or any such rates, together with all other rates or funds, or any of them, of the same county or borough, all or any of the money required for paying and defraying the monies, costs, and expenses which it shall appear by the said report have been or are to be incurred or paid by such county or borough as aforesaid; and such money may be so raised in any sum or sums, of not less than five hundred pounds each, at any rate (*c*) of interest not exceeding five pounds *per centum per annum*; and every such mortgage may be made by an instrument in the form contained in the schedule (B.) hereunto annexed, or to that or the like effect, and shall be executed in the case of a county by the chairman and two or more other justices present at the time of making such mortgage, and in the case of a borough by affixing the common seal of the borough thereto; and every such mortgage is hereby declared to be evidence that such report has been made as is herein-before required, and shall be effectual for securing to the person advancing the sum of money in such mortgage expressed to be advanced, his executors, administrators, and assigns, the repayment of such sum of money, with interest for the same after such rate, and at such time, and in such manner as in such mortgage shall be provided; and the said mortgages shall be numbered in the order of succession in which they shall be granted; and copies or extracts of all such mortgages shall be kept by the clerk of the peace or other proper officer having the custody of the records of the quarter sessions of such county, or of the records of such borough, as the case may be; and every person

(*c*) See 8 & 9 Vict. c. 84, s. 9.

to whom any such mortgage shall be made, his executors or administrators, is hereby empowered, by endorsing his or their name or names on such mortgage, to transfer the same, and his and their right to the principal money and interest thereby secured, unto any person; and every such assignee, his executors or administrators, may in like manner transfer the same again, and so *toties quoties*; and the person to whom such mortgage or any such transfer thereof shall be made, his executors and administrators, shall be a creditor or creditors upon the rates and funds thereby expressed to be mortgaged in an equal degree one with another, and shall not have any preference or priority other than is provided under the powers of this act.

XXXV. That it shall be lawful for the justices and council of any county and borough respectively to make application for an advance of any sum necessary for the purposes of this act, or the said act hereby repealed, to the commissioners acting in the execution of an act passed in the fifth and sixth years of the reign of her present Majesty Queen Victoria, intituled "An Act to authorize the Advance of Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries, and Employment of the Poor; and to amend the Acts authorizing the Issue of Exchequer Bills for the like Purposes," and of any of the acts in the above-mentioned act recited or referred to, and of any act or acts passed for amending or continuing the same acts; and the said commissioners, and also the commissioners of her Majesty's Treasury, or any three or more of them, are hereby empowered, if they shall think fit, to make such advances, upon any such application as aforesaid, upon the security of the county or borough rates or fund by this act directed to be assessed and raised, or any of them, and without requiring any further or other security than a mortgage of such rates.

8 & 9 Vict. c. 126.

Justices and council may apply to commissioners of consolidated fund for public works, under act 5 & 6 Vict. c. 9, for advance of money.

XXXVI. That the said justices or council, as the case may be, shall in every year charge the rates or funds of such county or borough with the sum for the time being required to pay the interest of the money so borrowed on such mortgages, or such of them as shall for the time being remain unpaid, and also with the payment of a further sum not less than one-thirtieth part of the whole of such mortgages at the time of the same being first made; and such sums shall be applied, under the direction of the said justices or council, in discharge of the interest on the said mortgages, or such of them as shall for the time being remain unpaid, and of so many of the principal sums owing on the said mortgages for the time being remaining unpaid as such sums, after payment of the interest as aforesaid, will extend to discharge until the whole of the principal monies for which such mortgages shall have been made, and the interest thereof, shall be fully paid and discharged; and the said justices and council, as the case may be, are and is hereby required to fix one or more days in each year on which such payments shall be made, and shall make

Provisions for the payment of the interest on the mortgages, and of a portion of the principal in each year.

8 & 9 Vict. c. 126.

orders for assessments in due time, so as to provide for such payments being regularly made; and the said justices or council, as the case may be, shall, by agreement with the parties or others advancing any money for the purposes of this act, determine the order or priority in which the several sums advanced shall be respectively discharged; and the justices of every county and the council of every borough so borrowing money on mortgage as aforesaid are and is hereby required to appoint a proper person to keep an exact and regular account of all receipts and payments in respect of principal monies borrowed or taken up as aforesaid, and the interest thereof, in a book or books separate and apart from all other accounts; and the said book or books, duly adjusted and settled up to the time being, to deliver annually, in the case of a county, into Court at some general or quarter sessions for such county, and in the case of a borough, to the council of the borough at such time as such council shall appoint; and the justices for every such county at such sessions, and the council for every such borough, are and is hereby required carefully to inspect all such accounts, and to make such orders for carrying the several purposes aforesaid into execution as to them shall seem meet.

Provision to be made for paying money borrowed within a limited time not exceeding thirty years.

XXXVII. Provided always, and be it enacted, that the justices of every county, and the council of every borough, borrowing money as aforesaid, shall make provision by means of the rates which they are hereby respectively authorized to make, and by the orders and directions which they are hereby authorized to give, that the whole principal money to be borrowed under the authority of this act by such county or borough, and all interest for the same, shall be fully paid and discharged within a time to be limited by such justices or council, not exceeding thirty years from the time of borrowing the same.

Power to raise money to pay off sums already borrowed.

XXXVIII. Provided also, and be it enacted, that in every case in which any monies shall have been borrowed under the powers of the said act hereby repealed, it shall be lawful for the justices of the county or borough for which such monies shall have been borrowed, with the consent of the parties from whom the same shall have been borrowed, to pay off the monies so borrowed, and to raise and borrow the monies necessary for that purpose, and also to repay the said last mentioned monies, and the interest thereof, under the powers of this act, as if the same were raised for the purposes of this act: Provided also, that all monies which have been already borrowed shall be discharged within the time originally fixed for payment thereof, and that all monies to be borrowed under this act shall be discharged within thirty years from the time of first borrowing the same.

Asylum may be erected beyond the limits of any county or borough; and justices of such

XXXIX. That the asylum to be provided for any county or borough, either solely or jointly, may be without the limits of such county or borough; and that when any asylum provided or to be provided solely or in part for any county or borough, or

any part of such asylum, is or shall be situate within the limits of any other county or borough, then and in every such case the justices of the county or borough to which such asylum shall wholly or partly belong shall have full power and authority to act in such other county or borough, so far as concerns the regulation of such asylum and the powers conferred by this act, in the like manner as if such asylum and every part thereof were situate within such county or borough.

8 & 9 Vict. c. 126.

county or
borough may
notwithstanding
act therein.

Rules and Officers of Asylum.

XL. That every committee of visitors shall, within twelve months after the passing of this act in the case of every asylum already established, and within twelve months after the completion thereof in the case of every asylum hereafter established, submit the existing general rules, or prepare and submit some proposed general rules, for the government of the asylum under their superintendence, to one of her Majesty's principal Secretaries of State, for his approval; and such rules, when approved by him, shall be printed, abided by, and observed; and every such committee shall have power, with the like approbation, to alter and vary such rules from time to time as they shall think necessary; and every such committee shall make from time to time such regulations and orders as they shall think fit, not inconsistent with the general rules for the time being in force for the management and conduct of the asylum; and in such regulations there shall be set forth the number and description of officers and servants to be kept, the duties to be required, and the salaries to be paid to them respectively; and every such committee shall from time to time, as occasion may require, appoint a treasurer, who shall keep accounts of all monies received and paid by him on account of the asylum, and such other officers and servants as they shall from time to time find necessary, in proportion to the number of persons confined in such asylum, and at such salaries or wages as they shall think fit, and may at any time dismiss any such treasurer, officer, or servant, and shall from time to time determine the diet of the patients, and fix a certain weekly sum to be paid for each person of the county or borough, and another weekly sum for each person not of the county or borough, erecting the asylum, confined in such asylum, of such amount that the same may be sufficient to defray the whole expense of the lodging, maintenance and care, medicine and clothing, and other expenses requisite for each person, and that the total amount of such weekly sums, after defraying such expenses, may also be sufficient to pay the salaries of the officers and attendants: Provided always, that such rate for a pauper shall in no case exceed fourteen shillings per week, and that the said visitors shall annually audit the accounts of the treasurer and clerk of every asylum, and report the same to the next general or quarter sessions for the county or borough,

Visitors to sub-
mit general
rules to the Se-
cretary of State,
and, subject to
such general
rules, to make
regulations and
to appoint and
dismiss officers,
and fix a weekly
rate for each
lunatic.

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counties or boroughs, and to the council of every borough, at the expense of which such asylum shall have been wholly or partly erected or provided.

If the rate be found insufficient, justices in session may increase it.

XLI. That if the aforesaid rate of fourteen shillings should be found insufficient for the purposes aforesaid, it shall be lawful for the major part of the justices of the county or borough, or of each of the counties or boroughs, at whose expense such asylum shall have been established, present at any general or quarter sessions or any special sessions for such county or borough or such counties or boroughs respectively, to make such addition to such rate as to them respectively shall seem fit and necessary, and to make an order or orders accordingly, which order or orders shall be signed by the clerk or clerks of the peace for the county or borough or respective counties or boroughs, and forthwith published in some newspaper commonly circulated within such county or borough, counties or boroughs.

Visitors to appoint a chaplain, medical officer, and a clerk.

XLII. That in every asylum already erected or provided, or hereafter to be erected or provided, the committee of visitors shall appoint a chaplain for the same, who shall be in priest's orders, and shall be licensed by the bishop of the diocese; and the said license shall be revocable by the bishop whenever he shall think fit (a); and such chaplain, or his substitute, approved by the visitors, shall perform and celebrate, in some convenient place within such asylum, divine service according to the rites of the Church of England as established by law, on every Sunday, Christmas Day, and Good Friday, and shall also perform and celebrate such service within the said asylum at such other times, and also such other services according to the rites of the Church of England as established by law, at such times as the visitors shall direct; and such committee shall also appoint a medical officer, who shall be resident in such asylum, and a clerk, who shall not be such medical officer, and who may reside in such asylum or not, as the committee shall think fit; and the committee shall have power to remove such chaplain, medical officer, and clerk, and from time to time to appoint another in his stead; and the committee shall, if they think fit, have power to appoint a visiting physician or surgeon to every such asylum, and shall appoint one of the officers to be the superintendent thereof: Provided always, that if any patient shall be of a

Patients allowed

(a) It was decided under stat. 9 Geo. 4, c. 40, s. 30, that the visiting justices of county lunatic asylums had the power of appointing and dismissing the chaplain at their discretion, though by section 32 the chaplain appointed must have been licensed by the bishop of the diocese, and though the bishop had power to revoke such license. Therefore where a chaplain appointed by the visiting justices, and afterwards licensed by the bishop, was dismissed by the justices and another appointed in his stead, but the bishop refused to revoke his first license or to license the new chaplain, the Court of Queen's Bench refused to issue a *mandamus* commanding them to admit the chaplain first appointed to perform the duties of chaplain in the asylum. *Reg. v. Visiting Justices of Middlesex Pauper Lunatic Asylum*, 2 Q. B. 433; 2 Gale & D. 300; 6 Jur. 682.

religious persuasion differing from that of the Established Church, a minister of such persuasion, at the special request of such patient or his friends, shall, with the consent of the medical officer of such asylum, be allowed to visit him or her at proper and reasonable times, under such restrictions imposed by the visiting justices as shall prevent injury to such patient and the other lunatics confined in such asylum; and provided also, that the medical officer of any asylum for chronic lunatics in which there shall for the time being be less than one hundred lunatics, need not be resident therein, but the medical officer of every such asylum, if he be not resident therein, shall visit the same three times at the least in every week, and with no longer intervals than one day between any two visits, and on every visit shall personally examine every patient in such asylum, except any patients whom there may be special and sufficient reasons for not so examining, and shall make an entry in a book to be kept therein for that purpose that he has so examined every patient therein, except any patients whom there may be special and sufficient reasons for not so examining, and, in case of there being any patients whom he has not examined, shall enter their names in the said book, and the reasons for not examining them.

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the visits of any minister of their own persuasion.

Medical officer to visit asylum three times a week, and examine patients.

XLIII. That in case any superintendent, chaplain, matron, or other officer or servant of any county or borough lunatic asylum shall, from confirmed sickness, age, or infirmity, become incapable of executing the office in person, it shall be lawful for the justices of the county assembled at the general or quarter sessions, and the justices of any borough at any meeting of such justices, not being less than five, and they are hereby empowered, to grant to such superintendent, chaplain, matron, or other officer or servant such annuity as they in their discretion shall think proportionate to the merits and time of services of such superintendent, chaplain, matron, or other officer or servant, and may order the payment out of the rates lawfully applicable to the building or repairing such county or borough lunatic asylum: provided always, that the annual amount paid by way of superannuation or allowance to any retired superintendent, matron, or other officer or servant of any asylum shall not exceed the amount of two-thirds of the salary payable at the time of his or her retirement.

Justices may grant annuity to the superintendent, &c., not exceeding two-thirds of their salaries.

XLIV. That the clerk of every asylum shall keep all books, documents, and instruments which the visitors of the asylum shall be required to keep or direct to be kept, and shall also keep an account of all monies which shall be received or paid on account of the asylum either to or by the treasurer of the asylum, or otherwise, and shall, in the month of March in every year, send a copy of the account of all such monies for the year previous, ending on the thirty-first day of December, to her Majesty's principal Secretary of State for the Home Depart-

Clerk of the asylum to keep account of monies paid and received, and send copies thereof annually to Secretary of State and Commissioners in Lunacy.

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ment, and to the clerk or clerks of the peace of the county or counties, borough or boroughs to which the asylum shall belong, and also to the commissioners in lunacy; and such commissioners shall, within one month from the receipt of such account, make out an abstract thereof, and lay the same before both houses of Parliament.

Visitation of Asylum.

Three visitors at least to visit once in every three months every asylum.

XLV. That not less than three members of every committee of visitors shall, once at the least in every three months, inspect every part of every asylum in which there shall be any lunatics of the county or borough, counties or boroughs for which they shall be visitors, and shall see and examine, as far as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the condition and management of such asylum and the lunatics therein, and shall sign such book upon every such visit, and such three visitors shall in their visits to every asylum for chronic lunatics be accompanied by the visiting physician or surgeon of the county or borough lunatic asylum, in all cases in which there shall be a visiting physician or surgeon.

Lists of Lunatics.

Lists of pauper lunatics in every asylum to be made half-yearly, and laid before the visitors, and copies transmitted to the clerk of the peace and to the secretary of the commissioners in lunacy.

XLVI. That the medical officer of every asylum shall on the first day of January and the first day of July in every year after the passing of this act prepare a list of all pauper lunatics then in such asylum, according to the form in the schedule (C.) No. 1, hereto annexed, and in the case of every asylum not devoted exclusively to chronic lunatics specifying such as in the opinion of the medical officer, and of the visiting physician or surgeon, in case there shall be a visiting physician or surgeon, may be properly placed in an asylum for chronic lunatics; and one copy of every such list shall by such medical officer, within fifteen days after the same shall have been prepared, be laid before the visitors of the asylum, and another shall be transmitted by such medical officer to the clerk of the peace of every or any county and every or any borough to which such asylum solely or jointly belongs, to be by him laid before the justices of such county or borough; and another copy of such list shall within the same time be transmitted by such medical officer to the Commissioners in Lunacy; and the medical officer of every asylum subject to the provisions of this act, receiving private patients, shall also on the first day of January and the first day of July in every year prepare a list containing the Christian and surnames of all the private patients in such asylum in the form No. 2, in the said Schedule (C.), and shall transmit such list within the same time as aforesaid to the Commissioners in Lunacy.

A list of all private patients in any asylum to be sent half-yearly to the commissioners.

XLVII. That the clerk of the board of guardians of every parish and union under a board of guardians, and the overseers of every parish not under a board of guardians, shall on the first day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics chargeable to the parish or union, in the form in Schedule (D.) hereunto annexed, and shall on or before the first day of February next succeeding lay one copy of such list before the visitors of the asylum of the county in which such union or parish is situate, and shall transmit one copy of such list to the clerk of the peace of the county or the clerk of the justices of the borough within which the parish to which each such lunatic is chargeable is situated, to be by him laid before the justices acting for such county at their next general or quarter sessions, or before the justices of the borough, another copy of such list to the Commissioners in Lunacy, and another copy thereof to the Poor Law Commissioners; and so much of the act passed in the sixth year of the reign of her present Majesty Queen Victoria, continuing the Poor Law Commission, as requires the clerk to every board of guardians to make out a return of such lunatics as aforesaid on the fifteenth day of August in every year shall, from the passing of this act, be repealed (*a*).

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Clerks of boards of guardians, and overseers where no guardians, to make annual returns of pauper lunatics.

Admission of Lunatics.

XLVIII. That the medical officer of every parish and union who shall have knowledge that any person chargeable to such parish, or to any parish within such union, is or is deemed to be

Medical officer to give notice of any chargeable pauper deemed

(*a*) That every board of guardians appointed under the provisions of the act 4 & 5 Wm. 4, c. 76, or acting under the regulations of the commissioners for the relief of the poor, and the relieving officers of such guardians shall have the like powers as overseers have with respect to insane persons under the provisions of the act 9 Geo. 4, c. 40, or of any act or acts passed to amend the same; and every such board of guardians shall from time to time pay or cause to be duly paid to the treasurer, managers, or keepers of any county lunatic asylum, public hospital, or licensed house respectively, all costs lawfully due in respect of any poor person maintained in such county lunatic asylum, public hospital, or licensed house, and if such costs shall not be duly paid by such board of guardians or overseers of the parish to which such poor person may have been chargeable according to the provisions of the said recited acts, then and in such case it shall be lawful for any two justices to proceed to the recovery of the said costs, by making and enforcing an order for the same on the overseers of the aforesaid parish, according to the provisions of the said recited acts; and it shall be lawful for any such board of guardians to contract with any person duly licensed to practise as a medical man to certify as to the state and condition of insane persons under the provisions of the last recited act; and whenever any insane person is relieved by any such board of guardians or any of their officers, the relieving officer within whose district the parish is situate to which such person may be chargeable, or in which such person may be found destitute, shall give the like information to some justice of the peace acting for the division of the county within which such parish is situated, as is required by the act 9 Geo. 4, c. 40, of overseers, and subject to the like penalties for neglect.—5 & 6 Vict. c. 57, s. 6. The remainder of this section is repealed by the above act.

Guardians to have the like powers as overseers with regard to lunatics.

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to be lunatic to parish officers, who are to have every lunatic whom they shall know of, by such notice or otherwise, examined and sent to an asylum.

lunatic, shall within three days after obtaining such knowledge give notice thereof in writing to the overseers of the poor of the parish, if the parish be not within an union, and to the relieving officer of the union if the parish be within an union; and every such overseer and relieving officer who shall have knowledge, either by such notice or otherwise, that any person chargeable to the parish of such overseer, or to any parish within the union of such relieving officer, is deemed to be lunatic, shall within three days after obtaining such knowledge give notice thereof to some justice of the county or borough (*a*) within which such parish is situate, and thereupon the said justice shall by an order under his hand and seal require the overseer or relieving officer of the parish or union to bring such person before him or some other justice of the said county or borough, at such time and place within three days from the time of such notice being given to such justice as shall be appointed by the said order; and the said justice before whom such person deemed to be a lunatic shall be brought shall call to his assistance a physician, surgeon, or apothecary, and examine such person; and if upon view or personal examination of such person, or from other proof, such justice shall be satisfied that such person is lunatic, and such physician, surgeon or apothecary, not being the medical officer of such union or parish, shall sign a certificate according to the form in schedule (E.) No. 1, to this act annexed, that such person is a lunatic, idiot, or insane person, or a person of unsound mind, such justice shall, by an order under his hand according to the form in the said schedule (E.) No. 1, to this act annexed, direct such person to be received into the asylum of the county or borough in which such parish is situate, or if there be no such asylum, or such asylum be full, then into some house duly licensed, or some hospital registered for the reception of lunatics; and such overseer or relieving officer shall immediately convey or cause the said lunatic to be conveyed to such asylum, house, or hospital, and such lunatic shall be received and confined therein (*b*): Provided always, that if any person deemed to be lunatic cannot, on account of his health or other cause, be safely taken before any justice, such person may be examined at his own abode or elsewhere by one justice, or by an officiating clergyman of the parish in which he shall be resident, together with an overseer of such parish, or the relieving officer of the union to which the same shall belong; and such justice or such clergyman together with an overseer or relieving officer, shall call to their assistance a physician, surgeon, or apothecary, and visit such person deemed to be lunatic; and if upon view or personal

(*a*) Under 9 Geo. 4, c. 40, s. 38, justices of the peace for a borough had not the power to send a pauper lunatic, chargeable to the borough, to the county lunatic asylum. *Reg. v. Cornwall*, 2 Dowl. & L. 775; 1 New Sess. C. 499; 14 Law J., N. S., M. C. 46, 9 Jur. 372.

(*b*) See 9 & 10 Vict. c. 84, s. 1.

examination such justice or clergyman shall be satisfied that such person is lunatic, and such physician, surgeon, or apothecary shall sign a certificate, according to the form in the said schedule (E.) No. 1, that such person is a lunatic, idiot, insane person, or person of unsound mind, such justice or such clergyman, together with an overseer or relieving officer, shall, by an order under his or their hand or hands according to the form in the said schedule (E.) No. 1, direct such person to be received into the asylum for the county or borough in which such parish is situate, or if there be no such asylum, or such asylum be full (*a*), then into some house licensed or hospital registered for the reception of lunatics, and such overseer or relieving officer shall immediately convey or cause the said lunatic to be conveyed to such asylum, house, or hospital, and such lunatic shall be received and confined therein: Provided also, that if the physician, surgeon, or apothecary by whom any such person shall be examined shall certify in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other physician, surgeon, or apothecary shall certify in writing that such person is fit to be removed; and every such physician, surgeon, and apothecary is required to give such last-mentioned certificate so soon as in his judgment it ought to be given.

XLIX. That every overseer or relieving officer of a parish or union, who shall have knowledge that any person wandering within his district, parish, or union is deemed to be a lunatic, such overseer or relieving officer shall immediately apprehend or take or cause such person to be apprehended and taken before a justice; (*b*) and every overseer or relieving officer who shall have knowledge that any person within his district, parish, or union, not being chargeable to any parish, is deemed to be a lunatic, and is under the care of a relative or other person who neglects or cruelly treats him, so that he is not properly taken care of, such overseer or relieving officer shall, within three days after obtaining such knowledge as last aforesaid, give notice thereof to some justice of the county or borough within which such district, parish, or union is situate; and thereupon the said justice shall, if he shall think fit, in case such notice shall be given in writing, and upon the oath of the person giving the

Provisions as to wandering lunatics, and lunatics not chargeable, and not under proper care.

(*a*) The stat. 9 Geo. 4, c. 40, s. 38, did not authorize the justices to remove an insane pauper to a private licensed asylum, on the ground that the county asylum was too full to afford accommodation for the pauper. *Reg. v. Ellis*, 13 Law J., N. S., 1 M. C., 1 Dav. & Mer. 261; 6 Q. B. R. 501.

(*b*) This section appears to be more peremptory than the repealed provisions of a similar kind; 17 Geo. 2, c. 5, s. 20; 9 Geo. 4, c. 40, s. 44. It was said, that the provision contained in the statute 17 Geo. 2, c. 5, s. 20, (now repealed) related to vagrant lunatics only, who were strolling up and down the country, and did not extend to persons who are of rank and condition in the world, and whose relations can take care of them properly by applying to the Court of Chancery; *Anon.* 2 Atk. 52.

8 & 9 Vict. c. 126.

Examination.

Removal to
asylum.Lunatic may be
examined at
home.Removal to an
asylum.

same, by an order under his hand and seal require the overseer or relieving officer of such district, parish, or union to bring such person before him and some other justice of the same county or borough, at such time and place, within three days from the time of such notice being given to such justice, as shall be appointed by the said order; and such justice before whom such wandering lunatic, or such two justices before whom such lunatic not being chargeable, shall be taken, shall call to his or their assistance a physician, surgeon, or apothecary, and one of the overseers or the relieving officer of the parish or union in which such person has been apprehended or taken, and shall examine such person; and if upon view or personal examination of such person, or from other proof, the said justice or justices shall be satisfied that such person is lunatic, and if not so chargeable as aforesaid has been neglected or cruelly treated by the relatives or other person under whose care he is, and if such physician, surgeon, or apothecary shall sign a certificate, according to the form in the said schedule (E.) No. 1 to this act annexed, that such person is a lunatic, idiot, insane person, or person of unsound mind, such justice or justices shall, if he or they think fit, by an order under his or their hand or hands according to the form in the said Schedule (E.) No. 1 to this act annexed, direct such person to be received into the asylum of the county or borough within which such person shall have been apprehended or taken, or if there be no such asylum, or such asylum be full, then into some licensed house or registered hospital; and such overseer or relieving officer shall immediately convey or cause such lunatic to be conveyed to such asylum, house, or hospital, and such lunatic shall be received and confined therein: Provided always, that if any such person as last aforesaid deemed to be lunatic cannot, on account of his health or other cause, be safely brought before any justice or justices as aforesaid, such person may be examined at his own abode or elsewhere by one justice in the case of a wandering lunatic, and by two justices in the case of a lunatic not being chargeable; and such justice or two justices shall call to his or their assistance a physician, surgeon, or apothecary, and visit such person deemed to be lunatic; and if upon view or personal examination such justice or justices shall be satisfied that such person is lunatic, and if not so chargeable as aforesaid has been neglected or cruelly treated by the relatives or other person under whose care he is, and if such physician, surgeon, or apothecary shall sign a certificate, according to the form in the said schedule (E.) No. 1, that such person is a lunatic, idiot, insane person, or person of unsound mind, such justice or justices shall, by an order under his or their hand or hands according to the form in the said schedule (E.) No. 1, direct such person to be received into the asylum for the county or borough in which such parish is situate, or if there be no such

asylum, or such asylum be full, then into some licensed house or hospital registered for the reception of lunatics; and such overseer or relieving overseer shall immediately convey or cause the said lunatic to be conveyed to such asylum, house, or hospital, and such lunatic shall be received and confined therein; and the justice or justices by whose order such lunatic shall be sent to an asylum, or any two visiting justices of the asylum to which he shall be sent, shall make an order (a) upon the treasurer of the guardians of the union in which the parish shall be situate from which he shall have been taken, or upon the overseer or overseers of the parish from which he shall have been taken, for the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, and in case it shall afterwards appear that such lunatic is chargeable to any other parish, then upon the treasurer of the guardians of the union in which such other parish is situate, or upon the overseers of such other parish: Provided also, that if the physician, surgeon, or apothecary by whom any such person shall be examined shall certify in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other physician, surgeon, or apothecary shall certify in writing that such person is fit to be removed; and every such physician, surgeon, and apothecary is hereby required to give such last-mentioned certificate as soon as in his judgment it ought to be given: Provided always, that if it shall appear to the said justice or justices, or any two visiting justices of the asylum in which

8 & 9 Vict. c. 126.

Order to be made on guardians for charges.

Application to relative or friend.

(a) Under the stat. 9 Geo. 4, c. 40, ss. 38, 44, which provided only for the future maintenance of the lunatic, an order upon the overseer of the parish in which the lunatic was found to be settled, for the expense of his maintenance, &c., at such house of reception, must be prospective only. If it was retrospective in part, such part would be quashed. *Rex v. Inh. of St. Nicholas, Leicester*, 3 Ad. & Ell. 79. It was also held, that the justices had no power under 5 Geo. 4, c. 71, to make a retrospective order of maintenance. *Rex v. Inh. of Maulden*, 8 B. & C. 81. Two justices made an order under stat. 9 Geo. 4, c. 40, as follows: "Whereas A. C., of Woolley, being a person insane, lunatic, and dangerous to go abroad, was, on the 29th August last, removed to, and confined, under an order of two justices in and for the West Riding, in the lunatic pauper asylum at W., in the said riding, and whose legal settlement, after due inquiry made and satisfactory evidence obtained, is at D., in the said riding: therefore we two of her Majesty's justices in and for the said riding, do hereby adjudge the legal settlement of the said A. C. to be in the parish of D. And whereas it hath been duly proved before us, upon oath, that the sum of 6*l.* hath been incurred by the township of Woolley aforesaid, in the removing, maintenance, and care of the said A. C. to the asylum aforesaid, we therefore order the overseers of D. aforesaid, to which parish the last legal settlement of A. C. is ascertained and adjudged to belong, to pay the sum of 6*l.* to the overseers of Woolley aforesaid, on demand. Given," &c. March 20th, 1829. It was held, that this was not a valid order under sect. 38 of the statute, because it operated retrospectively; nor under sect. 42, because it did not shew that the justices making the order were those who had inquired and heard evidence. It was held also, by *Patteson, J.*, that an order for repayment to the overseers of the removing parish is not legal under either section. *Reg. v. Inh. of Darton*, 12 Ad. & Ell. 78.

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Order upon
lunatic's prop-
erty.Authority to
trustee to pay.Relation may
take lunatic
under his care.

any such lunatic is confined, that such lunatic hath an estate applicable to his maintenance, and more than sufficient to maintain his family, if any, it shall be lawful for such justice or justices, if they or he shall think fit, to make an application in writing under his or their hand and seal or hands and seals to the nearest relative or friend of such lunatic, for the payment of the costs of the removal, examination, and maintenance of such lunatic; and in case such costs shall not be paid within six months after such application, it shall be lawful for such justice or justices, if he or they shall think fit, by an order under his or their hand and seal or hands and seals, to direct the overseers of any parish where any goods, chattels, lands, or tenements of such lunatic shall be, to seize and sell so much of the goods and chattels or take and receive so much of the rents or profits of the lands and tenements of such lunatic as may be necessary to pay the charges of the removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to such justice or justices, such charges having been first proved to the satisfaction of such justice or justices, and the amount set forth in such order; and if any trustee or other person having the possession, custody, or charge of any property of such lunatic, or if the governor and company of the Bank of England, or any other person or persons having in his or their hands any stock, interest, dividend, or annuity belonging or due to such lunatic, shall, upon the production of the order of such justice or justices, pay the whole or any part thereof to any overseer or relieving officer, to defray the charges set forth in such order, the receipt of such overseer or relieving officer shall be a good discharge to such trustee, governor, and company, or other person as aforesaid: Provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from retaining or taking such lunatic under his own care, if such relation or friend shall satisfy the justice or justices before whom such lunatic shall be brought, or the visitors of the asylum in which such lunatic is or is intended to be confined, that such lunatic will be properly taken care of (a).

(a) The act 7 & 8 Vict. c. 101, for the further amendment of the poor laws in England, contains the following provisions which are not repealed:—

Relief of married
women in cer-
tain cases to be
subject to the
same condi-
tions as if they
were widows.

That so long as it may appear that the husband of any woman is beyond the seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman, or to her child or children, shall, notwithstanding her coverture, be given to such woman in the same manner, and subject to the same conditions, as if she was a widow; but nothing herein contained shall diminish or affect the obligations or liabilities of such husband in respect of such relief. 7 & 8 Vict. c. 101, s. 25.

Expenses in-
curred for in-
sane paupers
may be levied
off their estates.

That if it be made to appear to any two justices that any insane person, lunatic, or idiot, chargeable to any parish hath an estate more than sufficient to maintain his family, they shall, by order under their hands and seals, direct the overseers of the parish to which such person is chargeable to seize so much of any money, to seize and sell so much of any goods and chattels, or to receive so much of the rent of the lands or tenements of such person who is proved to such

L. That if any medical officer of any union or parish as aforesaid shall omit, for more than three days after obtaining knowledge of any chargeable pauper being deemed to be lunatic as aforesaid, to give such notice thereof as is hereinbefore required, or if any overseer or relieving officer as aforesaid shall omit, for more than three days after obtaining knowledge of any chargeable pauper or other person not chargeable being deemed to be lunatic as aforesaid, to give notice thereof to a justice as aforesaid, or if any constable, overseer, or relieving officer shall omit to apprehend and take such wandering person deemed to be lunatic as aforesaid, such medical officer, overseer, relieving

8 & 9 Vict. c. 126.

Penalties on medical officers, overseers, &c., omitting to give notice as aforesaid.

justices to be necessary to pay any charges incurred in providing for the removal, maintenance, clothing, medicine, and care of such person; and if any trustee or other person having the possession, custody, or charge of any property of an insane person, lunatic, or idiot, or if the governor and company of the Bank of England, or any other person or persons, having in his or their hands any stock, interest, dividend, or annuity due to any such insane person, lunatic, or idiot, pay any money to any overseer or to any guardians of the poor to defray the charges incurred by any parish in the removal, maintenance, clothing, medicine, or care of such insane person, lunatic, or idiot, the receipt of such overseer, or of the clerk of such guardians, shall be a good discharge to such trustee or other person aforesaid. 7 & 8 Vict. c. 101, s. 27.

That the guardians of every parish or union appointed under any local act, and their officers appointed to act in the relief of the poor, and their clerks shall, from and after the passing of this act, have the like powers, and shall be liable to perform the same duties with respect to insane persons, as are provided in the case of guardians appointed under the provisions of the act 4 & 5 Wm. 4, c. 76, their relieving officer and their clerks respectively. 7 & 8 Vict. c. 101, s. 28.

Guardians under local acts to have powers with respect to insane poor.

Guardians of any union or parish may require the payment of pensions, or any superannuation or other allowance in respect of service in the army, navy, marines, or ordnance, or any other branch of military service, or in any civil branch of the army, navy, marines, or ordnance, to be made to them in case of relief given to any person entitled to such pension or allowance, or to his wife, or to any person whom he may be liable to maintain, by admission of such pensioner, his wife, or person, into the workhouse of such union or parish. 2 & 3 Vict. c. 51, ss. 2, 3, 4.

In the case of any such pensioner becoming insane, a justice of the peace for the county where he shall reside, upon due proof being made of such insanity, may certify the same to the commissioners of Chelsea Hospital, who shall thereupon order, according to their discretion, that the pension of such insane pensioner be paid to the guardians, &c., of the union or parish in which such pensioner shall reside, or to the wife, child, or other person to whom the care of such pensioner shall be intrusted, or to the treasurer of the county, if such pensioner shall be confined in a county lunatic asylum, or public asylum, or house licensed for the reception of persons insane. *Ib.* s. 5.

In cases of officers of the navy and marines, and seamen and marines, entitled to half-pay, pension, or prize money, becoming insane, a lunatic, or otherwise from his state of mind incompetent to the management of his affairs, the monies due to them may be paid to the wife, relative, or other person having the care and maintenance of such incompetent person towards his maintenance and support. 11 Geo. 4, and 1 Wm. 4, c. 20, s. 70.

In all cases when any such persons as last mentioned shall become lunatic, the pensions, superannuations, and other allowances made to them for services in the civil department of the navy, may be paid to the wife, relative, or other person having the care and maintenance of the lunatic, to be applied towards his support. 2 & 3 Vict. c. 51, s. 6.

8 & 9 Vict. c. 126.

No paupers to be received into any asylum without a certain order and certificate.

officer, or constable, as the case may be, shall for every such offence forfeit the sum of ten pounds.

LI. That no pauper or other such person as is hereinbefore mentioned shall be received into any asylum, registered hospital, or licensed house, without an order and statement, according to the form and stating the particulars required in the said Schedule (E.) No. 1, under the hands of one justice, or an officiating clergyman, with one of the overseers or the relieving officer of the parish or union for which such pauper or other person shall be sent as aforesaid, nor without a medical certificate according to the form in the said Schedule (E.) No. 1, signed by one physician, surgeon, or apothecary, and dated not more than seven clear days previous to the reception of such patient; and every person who shall receive any pauper or other such person as is hereinbefore mentioned into any asylum without such order and medical certificate shall be deemed guilty of a misdemeanor.

No person, not being a pauper, to be received into an asylum without an order and two medical certificates.

LII. That no person other than a pauper, or such other person as is hereinbefore mentioned, shall be received into any asylum without an order under the hand of some person, according to the form and containing the particulars required in Schedule (E.) No. 2, to this act annexed, nor without the medical certificate, according to the form and containing the particulars required in Schedule (E.) No. 2, annexed to this act, of two persons, each of whom shall be a physician, surgeon, or apothecary, and who shall not be in partnership, and each of whom shall separately from the other have personally examined the person to whom it relates, not more than seven clear days previously to the reception of such person into such asylum, and shall have signed and dated the same on the day on which such person shall have been so examined; and every person who shall receive or detain any person not a pauper in any asylum without such order and medical certificate as aforesaid shall be guilty of a misdemeanor: Provided always, nevertheless, that any person (not a pauper or such other person as hereinbefore is mentioned) may under special circumstances be received into any asylum, upon the certificate of one physician, surgeon, or apothecary alone, provided that such order state the special circumstances which have prevented the person from being examined by two medical practitioners; but in every such case such certificate shall be further signed by some other physician, surgeon, or apothecary, within three days after the reception of such patient into such asylum; and every person who, having received any person into any asylum as aforesaid, upon the certificate of one medical practitioner alone, as aforesaid, shall keep or permit such person to remain in such asylum beyond the said period of three days, without such certificate having been further signed as aforesaid, shall be guilty of a misdemeanor.

A medical prac-

LIII. That any physician, surgeon, or apothecary who shall

knowingly sign any such medical certificate as aforesaid which shall untruly state any of the particulars required by this act shall be guilty of a misdemeanor ; and that no certificate signed by any medical officer of the asylum into which the lunatic is received shall be of any avail, or be deemed to be in compliance with the aforesaid provisions regarding such certificate.

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titioner signing untrue certificate guilty of a misdemeanor.

LIV. That every such order by a justice, or clergyman, and overseer or relieving officer, as aforesaid, for the reception of a lunatic into an asylum, shall extend to his admission not only into the principal lunatic asylum of the county or borough, counties or boroughs, but also into any other asylum for the reception of pauper lunatics of such county or borough, and also to any asylum for any other county or borough, or any house licensed or hospital registered for the reception of lunatics: Provided always, that every lunatic shall under every such order as last aforesaid be taken, in the first place, to the principal asylum of the county or borough in which the parish or place from which he is sent shall be situate, and shall there be kept, unless there be no such asylum, or there is a deficiency of room in such principal asylum, or unless there shall be some special circumstances whereby such pauper cannot conveniently be taken in the first place to such principal asylum, which deficiency of room or special circumstance shall be stated in writing upon the order for the reception of such lunatic into any asylum, registered hospital, or house other than the principal asylum aforesaid ; and that no such lunatic shall be sent to or detained in any registered hospital or house licensed for the reception of lunatics, except there shall be no asylum, or no asylum in which he can be received, or there shall be some special circumstances whereby he cannot be taken thereto, which shall be stated in like manner as aforesaid ; and it shall be lawful for any two visiting justices of any asylum, by an order in writing under their hands and seals, to direct any overseer or relieving or other officer of any parish, union, county, or borough contributing to any asylum to remove any pauper lunatic chargeable to such parish, union, county, or borough now or at any time hereafter being in any registered hospital, or house licensed for the reception of lunatics, therefrom, to any asylum subject to the regulations of this act ; and such lunatic shall be removed at the expense of such parish, union, county, or borough accordingly ; and every such overseer or relieving or other officer as aforesaid who shall for the space of fourteen days after the date of any such order neglect or refuse to remove any lunatic according to such order, and every officer or proprietor of any registered hospital or licensed house who shall refuse to permit any such removal, shall forfeit for every such offence any sum not more than twenty nor less than two pounds.

Every pauper to be in the first place taken to the principal asylum of the county or borough, if circumstances admit.

LV. That every pauper lunatic chargeable to any parish who shall not be in an asylum or a registered hospital, or a house

Every pauper lunatic, not being in an

8 & 9 Vict. c. 126.

asylum or house licensed for the purpose, shall be visited once in every three months by a medical man, and returned in a list to the clerk of the peace and the commissioners in lunacy.

duly licensed for the reception of pauper lunatics, shall be visited once in every three months by the medical officer of the parish or union to which such lunatic shall belong; and a list of all such lunatics shall be sent once in every three months by such medical officer to the clerk of the peace of the county or borough to which such lunatic shall belong, or in which he shall be resident, to be by him laid before the justices acting for such county at their next general or quarter sessions, or before the justices of such borough, and to the visitors of the asylum for the county in which such parish or union shall be situate, and to the Commissioners in Lunacy, according to the form in Schedule (F.) to this act annexed; and the said list shall state whether any such lunatic is or is not, in the opinion of such medical officer, fit to be at large and is properly taken care of; and such list of such lunatics shall be prepared and signed by the medical officer required to make the same: Provided nevertheless, that after an asylum shall be established for any county or borough under the provisions of this act no pauper who shall have lately become lunatic (whether such pauper shall or shall not have been previously confined in an asylum) shall be received, lodged, or detained in any house or place other than a county or borough lunatic asylum, or a public hospital, or a house duly licensed for the reception of pauper lunatics, for a longer period than shall be requisite for obtaining an order for the removal of such lunatic to such asylum; and if any medical officer shall return any such pauper in any such list as fit to be at large, or shall knowingly sign any such list, untruly setting forth any of the particulars required by this act, he shall for every such offence forfeit any sum not less than ten and not exceeding fifty pounds.

Power to visitors to remove paupers to an hospital for chronic lunatics, and to provide further room, if necessary, for curable lunatics.

LVI. That with a view to make room in the principal lunatic asylum for any county or borough, counties or boroughs, for patients deemed capable of cure, it shall be lawful for any three of the visitors thereof, by writing under their hands and seals, from time to time to cause to be removed from such principal asylum to some other asylum, registered hospital, or licensed house any pauper lunatic who shall have been returned in the lists herein-before required to be made by the medical officer of such principal asylum as a proper patient to be removed to an asylum for chronic lunatics, and also at any time in like manner to send to the principal asylum any pauper lunatic who shall be confined in the asylum for chronic lunatics, or in some hospital or licensed house; and in case at any time there shall not be in the principal asylum of any county or borough, counties or boroughs, any pauper lunatic who shall have been returned in such lists, the medical officer of such asylum shall, by writing under his hand, report such fact to the justices of the county or borough, counties or boroughs to which such asylum shall solely or jointly belong, and to the commissioners in

lunacy, who shall thereupon report the same to one of her Majesty's principal Secretaries of State; and it shall also be lawful for the commissioners in lunacy, or any two of them, by writing under their hands and seals, to direct that any lunatic, and whether returned in such lists as last aforesaid or not, shall be removed from the principal asylum to an asylum for chronic lunatics, or hospital, or licensed house, or from an asylum for chronic lunatics, or hospital, or licensed house, to the principal asylum, and every such lunatic shall be removed accordingly by the visiting justices of every such asylum, and no further certificate shall be necessary for any such removal.

8 & 9 Vict. c. 126.

Payment for Maintenance of the Lunatic.

LVII. That when any pauper lunatic shall be confined under the provisions of this act he shall, for the purposes of this act, be deemed to belong to and continue chargeable to the parish from which, or at the instance of some officer or officiating clergyman of which, he shall have been sent, until such parish shall in due course of law, as in the case of any other pauper, have established that such lunatic is settled in some other parish, or that it cannot be ascertained in what parish such lunatic is settled, and that every pauper lunatic who is chargeable to any parish shall, whilst he shall reside in an asylum, be deemed, for the purposes of his settlement (*a*), to be residing in the parish to which he is chargeable.

Every pauper lunatic to be deemed to be settled in the parish from which he shall have been sent till he be adjudged to be settled in some other parish.

LVIII. That it shall be lawful for any two justices for the county or borough in which any asylum, registered hospital, or licensed house is situate, or to which such asylum shall wholly or in part belong, or from any part of which any pauper lunatic shall have been sent, at any time to inquire into the last legal settlement of any pauper lunatic confined or ordered to be confined therein; and if satisfactory evidence can be obtained as to such settlement in any parish, township, or place, such justices shall, by order (*b*) under their hands and seals, adjudge such settlement accordingly.

Two justices may inquire into and adjudge the settlement of a lunatic.

LIX. That if any pauper lunatic shall not be settled in the parish by which, or at the instance of some officiating clergyman or officer of which he shall be sent to any asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, the relieving officer of the union in which such first-mentioned parish is situate, or the overseers of such first-mentioned parish, shall give notice to the clerk of the peace of the county in which such lunatic was found to appear for such county before two justices thereof, at a time

Mode of determining that a pauper lunatic is chargeable to a county.

(*a*) See *Reg. v. Whissendine*, 2 Q. B. R. 450.

(*b*) In general no order can be made by magistrates in the absence of the party whose interests will be affected by it. *Reg. v. Totness Union*, 2 New Sess. C. 82; Law J. 1845, M. C. 148.

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and place to be appointed in such notice ; and such two justices, or any two or more justices of such county, may then and there, upon the appearance of such clerk of the peace, or any one on his behalf, or in case of his non-appearance, upon proof of his having been served with such notice, inquire into the circumstances of the case, and unless the contrary be shown shall adjudge such pauper lunatic to be chargeable to such county : provided always, that it shall be lawful for such two justices to direct such inquiry to be made to ascertain the parish in which any pauper is settled, as they shall think fit, and to delay adjudging a pauper to be chargeable to any county until such further inquiry shall have been made ; and provided also, that every county to which any pauper lunatic shall be adjudged to be chargeable as aforesaid may at any time thereafter inquire as to the parish in which such lunatic is settled, and may procure such lunatic to be adjudged to be settled in any parish.

In cases of inquiries and appeals, guardians and officers interested to have access to the lunatic.

LX. That in every case of an inquiry, investigation, dispute, or appeal as to the parish in which a pauper lunatic is settled, the guardians, clerks of the guardians, relieving officers, and overseers of every union including any parish, or of any parish which parish respectively is interested in such inquiry, investigation, dispute, or appeal, and every person duly authorised by them respectively, and the clerk of the peace of any county interested in such inquiry, investigation, dispute, or appeal, and every person duly authorised by such clerk of the peace, shall at all reasonable times be allowed free access in the presence of the medical attendant to the lunatic to examine him as to the premises.

Justices to make an order upon the officers of unions and parishes for maintenance of lunatics.

LXI. That it shall be lawful for the justice or justices by whom any lunatic shall be sent to an asylum, registered hospital, or licensed house, under the powers of this act, or for any two justices being visitors of any asylum to which a lunatic shall be sent or removed, to make an order upon the treasurer of the guardians or other officer of the union or parish, or the overseers of the parish from which, or at the instance of any officer or clergyman of which, such lunatic shall have been sent or removed, for payment to the treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house of the reasonable charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in such asylum, hospital, or house ; and every treasurer of the guardians or overseer on whom such order shall be made shall, out of any monies which may come into his hands by virtue of his office, from time to time pay to the said treasurer, officer, or proprietor the charges aforesaid (a).

(a) See *post*, s. 68.

LXII. That if, after any lunatic shall have been sent (a) to an asylum, registered hospital, or licensed house, it shall be adjudged (b) that such lunatic is settled in a parish different from the parish from which, or at the instance of some clergyman or officer of which, he was sent to such asylum, hospital, or house, then and in such case it shall be lawful for any two justices of the county (c) from any part of which any lunatic shall have been sent, or for any two justices, members of the committee of visitors of such asylum, to make an order or orders upon the treasurer of the guardians of the union, including any parish (d), or of any parish or the overseers of the parish in which such lunatic shall be so adjudged to be settled, for payment (e) to the treasurer of the guardians or overseers of the first-mentioned union or parish of all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and his conveyance to the asylum, hospital, or house, and of all monies paid by the treasurer of the guardians, or the overseers of such first-mentioned union or parish, to the treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to the date of such order, and also for payment to the treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house, of the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and every treasurer of the guardians or overseer on whom any such last-mentioned order shall be made shall, out of any money which may come into his hands by virtue of his office, immediately pay to the treasurer of the guardians or overseers of such first-mentioned union or parish the amount of the expenses and monies by such order directed to be paid to him or them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house the future charges aforesaid: Provided always, that the guardians of any union or parish, or the overseers of any parish, township, or place, affected by such order, may appeal against the same in like manner (f) as if the same were a warrant of removal; and in case of such appeal the guardians of the union or parish, or the overseers of the parish, township, or place, or the clerk of the peace of the county to which such lunatic was chargeable before such order was made, may defend such appeal, and the

8 & 9 Vict. c. 120.

If lunatic adjudged to belong to some other parish, justices to make orders upon such other parish, or the union to which it belongs, for his maintenance.

(a) See *Reg. v. Cornwall J.*, 2 Dowl. & L. 775; 1 New Sess. C. 499; 11 Law J. (N. S.) M. C. 46; 9 Jur. 372.

(b) See *Reg. v. Pixley*, 3 Gale & D. 96; 7 Jur. 595; Law J. 1843, M. C. 87, 296; 4 Q. B. R. 711.

(c) *Reg. v. Darton*, 3 P. & Dav. 483; 12 Ad. & E. 78.

(d) See *Reg. v. Pixley*, *supra*, n. b.

(e) See *Reg. v. Darton*, *supra*, n. c.; *Reg. v. St. Andrew, Worcester*, 4 Q. B. R. 729; 1 Dav. & M. 382.

(f) See 5 Geo. 4, c. 71, s. 4.

8 & 9 Vict. c. 126.

persons appealing or intending to appeal, and the persons defending such appeal, shall have all the same powers, rights, and privileges, and be subject to the same obligations, in all respects as in the case of an appeal against a warrant of removal (a).

If it is ascertained that a lunatic is chargeable to a county, the justices to make order upon the treasurer of such county for his maintenance.

LXIII. That if, either before or after any lunatic shall have been sent to an asylum, registered hospital, or licensed house, it shall be ascertained or adjudged in due course of law that such lunatic is chargeable to a county, it shall be lawful for any two justices, members of the committee of visitors of such asylum, or any two justices of the county in which such asylum, registered hospital, or licensed house is situate to make an order or orders upon the treasurer of such county so chargeable as aforesaid for payment to the treasurer of the guardians or overseers of any union or parish of all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and his conveyance to the asylum, registered hospital, or licensed house, and of all monies paid by the treasurer of the guardians or overseers of such union or parish to the treasurer or an officer or proprietor of the asylum, registered hospital, or licensed house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to the date of such order, and also for payment to the treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house of the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and every such treasurer of a county on whom any such order shall be made shall, out of any monies which may come into his hands by virtue of his office, immediately pay to the treasurer of the guardians or the overseers of such union or parish the amount of the expenses and monies by such order directed to be paid to him or them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house the future charges aforesaid.

Provision for the reimbursement to a county of monies paid on account of a lunatic afterwards adjudged to belong to any parish.

LXIV. That if after any lunatic shall have been sent to an asylum, registered hospital, or licensed house as aforesaid, and shall have been adjudged in due course of law to be chargeable to a county, such county shall afterwards procure in due course of law such lunatic to be adjudged to be settled in any parish, it shall be lawful for any two justices, members of the committee of visitors of such asylum, or any two justices of the county in which such asylum, registered hospital, or licensed house is

(a) Several cases occurred with respect to appeals against orders of removal of insane persons under the stat. 9 Geo. 4, c. 40. See *Reg. v. J. of West Riding of Yorkshire*, Law J. 1846, Q. B. 152. *Reg. v. Holdsworth*, 1 Q. B. R. 221; 1 Gale & D. 442. *Reg. v. J. of Radnor*, 2 New Sess. C. 412. *Reg. v. Inh. of Heyop*, Law J. 1846, M. C. 70. *Reg. v. J. of Kent*, 2 Q. B. R. 686; 2 Gale & D. 152. *Reg. v. Inh. of Whissendine*, 2 Ad. & E. 450; 1 Gale & D. 560. *Rex v. Inh. of Stockton*, 5 B. & Ad. 546. *Reg. v. Inh. of St. Andrew, Worcester*, 1 Dav & M. 382.

situate, to make an order upon the treasurer of the guardians of the union, including any parish, or of any parish, or the overseers of any parish, for payment to the treasurer of the said county of all expenses and monies paid by such last-mentioned treasurer as hereinbefore is provided, and incurred within twelve calendar months previous to such order, and also for payment to the treasurer or officer or proprietor of the asylum, registered hospital, or licensed house of the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and every such treasurer of the guardians or overseer on whom any such order shall be made shall, out of any monies which may come into his hands by virtue of his office immediately pay to the treasurer of such county the amount of the expenses and monies by such order directed to be paid to him, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house the future charges aforesaid. 8 & 9 Vict. c. 126.

LXV. That in any case where application shall be made to the committee of visitors of any asylum by any relative or friend of a pauper lunatic confined therein, requiring that he may be delivered over to the custody and care of such relative or friend it shall be lawful for any three members of the committee of visitors aforesaid, if they shall think fit, and upon the undertaking in writing of such relative or friend to the satisfaction of such visitors that such lunatic shall be no longer chargeable to any union, parish, county, or borough, and shall be properly taken care of, and shall be prevented from doing injury to himself or others, to discharge such lunatic. Visitors may discharge a lunatic on the undertaking of a relative or friend that he shall be no longer chargeable, and shall be taken care of.

LXVI. That it shall be lawful for any justices, being members of the committee of visitors of any asylum, to make any such order as aforesaid upon the treasurer of the guardians or overseer of any union or parish, although such union or parish may not be within the jurisdiction of such justices, and that any such justices may make any such order as aforesaid upon the treasurer of any county or borough, although such justices shall not have jurisdiction therein. Justices to make orders out of their respective jurisdictions.

LXVII. That if any person shall feel aggrieved by any refusal of an order of any justice or justices as aforesaid, such person may appeal to the justices at the next general or quarter sessions of the peace for the county or borough where the matter of appeal shall have arisen, the person so appealing having given to the justice or justices against whom such appeal shall be made fourteen days notice of the intention to make such appeal, and the said justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and such determination as they shall make shall be final and conclusive to all intents and purposes whatsoever. Persons aggrieved by an order or refusal may appeal to the sessions.

LXVIII. That if any treasurer of a board of guardians, or any relieving officer or overseer, or any treasurer of any county, Money ordered to be paid by any clerk, over-

8 & 9 Vict. c. 126.

seer, relieving officer, or treasurer to be levied (in case of neglect to pay) by distress.

Power for medical persons, guardians, and overseers of unions and parishes to visit pauper patients of such unions and parishes confined in any asylum.

When any asylum can accommodate more than the lunatics of the county or borough, visitors or justices may order the admission of other lunatics.

upon whom any order of justices for the payment of money under the provisions of this act shall have been made, shall, for the space of twenty days next after due notice of such order, refuse or neglect to pay the money so ordered to be paid, the said money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the treasurer, overseer, or relieving officer so refusing or neglecting, or any of them, by warrant under the hands and seals of any two justices hereby authorized to make the order for payment of the money aforesaid, or by an action at law against such treasurer, overseer, or relieving officer; and in case of any action no objection shall be taken to any default or want of form in any order of admission or maintenance, or in any certificate or adjudication under this act, if such order or adjudication shall not have been appealed against, or if appealed against shall have been affirmed (*a*).

LXIX. That any physician, surgeon, or apothecary to be appointed by the guardians of any union or parish, or the overseers of any parish, and also the guardians or any appointed member of the guardians of any union or parish, and also the overseers of any parish, shall be permitted whenever they shall see fit, between the hours of eight in the morning and six in the evening, to visit and examine any or every pauper lunatic belonging to such union or parish confined in any asylum, registered hospital, or licensed house: Provided always, that if the medical officer of any asylum shall be of opinion that it will be injurious to any lunatic to permit such visit and examination, and such medical officer shall state in writing the reasons why such lunatic should not be visited and examined, and shall sign such statement, and deliver the same to the person or persons so requiring to visit and examine such lunatic, then and in such case it shall be lawful for such medical officer to refuse such visit and examination.

LXX. That whenever it shall appear to the committee of visitors of any asylum that such asylum is more than sufficient for the accommodation of all the pauper lunatics of the county or borough, counties or boroughs for which the same shall have been provided, the committee of visitors shall give notice thereof by advertisement in some newspaper commonly circulated in such county or borough, counties or boroughs, and it shall be lawful for such visitors, and also for the justices of a county or counties in general or quarter sessions for such county or counties, and the justices of a borough or boroughs at a special meeting or meetings, (subject nevertheless and without prejudice to any agreement in that behalf with any voluntary subscribers,) to make an order for the admission of so many pauper lunatics of any other county or borough as to them shall seem expedient, under the conditions and regulations following; (that is to say),

(*a*) See 9 & 10 Vict. c. 84, s. 8.

that no such lunatic shall be admitted into such asylum without an order, and one certificate according to the form in schedule (E.) No. 1, and indorsed by a visitor of the said asylum, or a justice of some county or borough to which such asylum solely or jointly belongs, nor without an undertaking by the minute of the guardians or signed by two of the overseers of the union or parish to which such lunatic shall belong for the due payment of the weekly allowance and other expenses attendant upon the lodging, maintenance, medicine, clothing, and care of such lunatic during his continuance in such asylum, as well as for the removal of such lunatic from such asylum within three days after due notice given in writing by the superintendent of such asylum : Provided always, that the provision for the maintenance of such lunatics to be so admitted shall be fixed by the visitors at such rate as shall in their judgment be sufficient to cover every expense liable to be incurred on account of each such lunatic, or at any higher rate ; but that so much of such rate as shall exceed the sum usually charged at such asylum for the maintenance of any pauper lunatic belonging to the county or borough for which such asylum shall be erected, or any parish situate therein, shall be deemed to be and shall be leviable as any monies hereby directed to be raised for erecting and providing an asylum for any county or borough.

8 & 9 Vict. c. 126.

Removal and Discharge of Lunatics.

LXXI. That it shall be lawful for any three members of the committee of visitors of any asylum, by writing under their hands and seals, to order the removal or discharge of any person confined in any such asylum, whether such person shall be recovered or not, and also for any three members of the committee of visitors, by writing under their hands and seals, by and with the advice and consent in writing of the medical officer of such asylum, to permit any person who shall be confined in such asylum, and shall be deemed convalescent, to be absent either wholly or partly from the asylum, upon trial, for such period not exceeding one month as such visitors shall think fit, and to make such allowance to such person, not exceeding the sum which he would cost if in the asylum, which shall be and be deemed his cost in the asylum, and also, with the like consent, to discharge therefrom any person confined therein, whose recovery may be certified by such medical officer ; and every person who shall have been sent to any asylum as a pauper lunatic shall be safely kept therein until such order for his removal, trial, or discharge shall have been given as aforesaid ; and if any superintendent, officer, or servant in any asylum shall, through wilful neglect or connivance, permit such person in any case to quit or escape from such asylum, or be at large without such order as aforesaid, he shall for every such offence forfeit and pay any sum not more than twenty pounds nor less than two pounds.

Discharge and removal of lunatics from asylums.

Penalty on officers, &c. allowing them to escape, or be at large without permission.

8 & 9 Vict. c. 126.

Expenses of the removal or discharge of a pauper.

LXXII. That on the regular discharge or removal of any pauper from any asylum the necessary expenses attending the said discharge or removal of such pauper shall be borne by the union or parish (if any) to which such pauper shall then be deemed to belong, as hereinbefore is provided, or if such pauper shall then be chargeable to a county as hereinbefore is provided, then by such county; and such expenses, being proved to the satisfaction of and allowed by two justices for the county in which such union, parish, or asylum shall be situate, or for the county to which such pauper shall be chargeable, shall be paid by the guardians or overseers of such union or parish out of the money raised therein for the relief of the poor, or by the treasurer of such county out of the rates of such county.

Entries and Notices.

Every clerk receiving a lunatic into an asylum to make an entry thereof in a certain form.

Copies of all orders and certificates of admission, with an additional medical certificate, to be transmitted to the commissioners in lunacy.

LXXIII. That the clerk of every asylum shall, immediately on the admission of any person as a lunatic into such asylum, make an entry with respect to such lunatic in a book to be kept for that purpose, to be called "The Register of Patients," according to the form and containing the particulars specified in the schedule (G.) No. 1, to this act, except as to the form of disorder, the entry as to which is to be supplied by the medical officer of the asylum within one month after the admission of the patient, and after the second and before the end of the seventh clear day from the day of the admission of any person as a lunatic into any asylum shall transmit to the commissioners in lunacy a copy of the order and certificate or certificates on which such lunatic has been so received, together with a statement to be made and signed by the medical officer of the asylum, according to the form in the said schedule (E.) No. 3, to this act annexed; and any clerk omitting so to make such entry, or to transmit such copy and statement, within the time aforesaid, and every medical officer omitting to make or sign such statement, shall for every such offence forfeit the sum of twenty pounds.

Weekly Medical Journal and Case Book to be kept in every asylum.

LXXIV. That in every asylum the medical officer thereof shall once in every week enter into a book to be kept for that purpose, to be called "The Medical Journal," a statement according to the form in the said schedule (G.) No. 3, showing the number, sex, and state of health of all the patients then in such asylum, the Christian and surname of every patient then under restraint, seclusion, or under medical treatment, the condition of the asylum, and every death, injury, and violence which shall have happened to or affected any patient since the then last preceding entry, and shall also enter into a book, to be called "The Case Book," as soon as may be after the admission of any patient, the mental state and bodily condition of every patient at the time of his admission, and also the history from time to time of his case whilst he shall continue in the asylum;

and such books shall from time to time be regularly laid before the visitors, for their inspection and signature; and every medical officer omitting to make such entries or any of them shall for every such offence forfeit the sum of twenty pounds. H & 9 Vict. c. 126.

LXXV. That in case of the death of any patient in any asylum, a notice and statement, according to the form in schedule (E.) No. 4, of the cause of the death of such patient, and the name of any person or persons who were present at the death, shall be drawn up and signed by the clerk and medical officer of such asylum, and a copy thereof shall be by the clerk transmitted to the registrar of deaths for the district, and to the clerk of the peace of the county or borough, counties or boroughs, by which the asylum is provided, and to the commissioners in lunacy, within forty-eight hours of the death of such patient, and also to the relieving officer or the overseer of the union or parish or other person who shall sign the statement accompanying the order for the admission or confinement of any lunatic; and every medical officer or superintendent who shall neglect or omit to draw up, sign, or transmit such statement as aforesaid shall respectively forfeit and pay any sum not more than twenty pounds nor less than two pounds. In case of the death of a lunatic, the cause of death to be stated, and sent to the clerk of the peace and the commissioners in lunacy.

LXXVI. That the clerk of every asylum shall, within three clear days after the death, discharge, or removal of any patient, make an entry thereof in the said register of patients, according to the form and containing the particulars in the said schedule (G.) No. 2, to this act; and every such clerk who shall not, within such three clear days after the death, discharge, or removal of every lunatic as aforesaid, make such entry as aforesaid, shall forfeit and pay any sum not less than two pounds nor exceeding ten pounds; and every such clerk who shall knowingly and wilfully in such entry untruly set forth any of the particulars required shall be guilty of a misdemeanor. Entries to be made of the death, discharge, or removal of every lunatic.

LXXVII. That if any superintendent, officer, nurse, attendant, servant, or other person employed in any asylum, under the regulations of this act, shall in any way abuse, ill-treat, or wilfully neglect any lunatic confined therein, he shall be deemed guilty of a misdemeanor. Penalty on officers or servants illtreating lunatics.

Recovery of Penalties.

LXXVIII. That every complaint and information of and for offences against this act, where any pecuniary penalty is hereby imposed, may be made before one justice; and such justice may summon the person complained of to appear at a time and place to be named in such summons; and if he shall not appear accordingly, and upon proof of the due service of the summons (either personally or by leaving the same at his last or usual place of abode), any two justices may issue their warrant for Recovery of penalties, and application thereof.

8 & 9 Vict. c. 126.

apprehending such person, and bringing him before any two justices ; and any two justices shall and may, upon the appearing of such person pursuant to such summons, or upon such person being apprehended with such warrant, hear the matter of every such complaint and information, by examination of any witnesses upon oath, and make such determination thereon as such justices shall think proper ; and upon conviction of any person such justices may, if they shall think fit, reduce the amount of the penalty by this act imposed for such offence to any sum not less than one-fourth of the amount thereof, except where otherwise provided, and shall and may issue a warrant under their hands and seals for levying such penalty or reduced penalty, and all costs and charges of such summons, warrant, hearing, and all incidental costs and charges, by distress and sale of the goods and chattels of the person so convicted ; and it shall be lawful for any such two justices to order any person so convicted to be detained and kept in the custody of any constable or other peace officer until return can be conveniently made to such warrant of distress, unless the said offender shall give security to the satisfaction of such justices, by way of recognizance or otherwise, for his appearance before such justices on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security ; but if upon the return of such warrant of distress it shall appear that no sufficient distress can be had whereupon to levy the said penalty, and such costs and charges as aforesaid, and the same shall not be forthwith paid, or if it shall appear to the satisfaction of such justices, either by the confession of the offender or otherwise, that the offender hath not sufficient goods and chattels whereupon such penalty, costs, and charges may be levied, such justices shall and may, by warrant under their hands and seals, commit such offender to the common gaol or house of correction for any term not exceeding three calendar months, unless such penalty, and all such costs and charges as aforesaid, shall be sooner paid ; and all such penalties, when recovered, shall be paid into the hands of the treasurer of the asylum for the county or borough, or the united counties or boroughs, where the offence shall be committed, or to the secretary of the Commissioners in Lunacy, whichever shall prosecute for such offence, and the overplus (if any) arising from such distress and sale, after payment of the penalty, and all costs and charges as aforesaid, shall be paid to the owner of the goods and chattels so distrained.

Form of conviction before justices.

LXXIX. That the justices before whom any person shall be convicted of any offence against this act for which a pecuniary penalty is imposed may cause the conviction to be drawn up in the following form, or in any other form to the same effect, as the case may require, and that no conviction under this act shall be void through want of form :

8 & 9 Vict. c. 126.

‘ Be it remembered, That on the day of
 ‘ in the year of our Lord at
 ‘ in the county [*or* borough] of *A. B.* was con-
 ‘ victed before us of her Majesty’s justices
 ‘ of the peace for the said county [*or* borough], for that he the
 ‘ said did ; and we the said
 ‘ adjudge the said for his offence to pay the sum
 ‘ of pounds.’

LXXX. Provided always, and be it enacted, That any person who shall think himself aggrieved by any order or determination of any justices under this act, other than orders adjudicating as to the settlement of any lunatic pauper, and providing for his maintenance, may, within four calendar months after such order or determination made or given, appeal to the justices at general or quarter sessions, the person appealing having first given at least fourteen clear days’ notice in writing of such appeal, and the nature and matter thereof, to the person appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace, with two sufficient sureties conditioned to try such appeal, and to abide the order and award of the said Court thereupon; and the said justices at general or quarter sessions, upon proof of such notice and recognizance having been given and entered into, shall in a summary way hear and determine such appeal, or, if they think proper, adjourn the hearing thereof until the next general or quarter sessions, and, if they see cause, may reduce any penalty or forfeiture to not less than one-fourth of the amount imposed by this act, and may order any money to be returned which shall have been levied in pursuance of such order or determination, and may also award such further satisfaction to be made to the party injured, or such costs to either of the parties, as they shall judge reasonable and proper; and all such determinations of the said justices at general or quarter sessions shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever.

Power of appeal
to the quarter
sessions.

Provisions for Boroughs.

LXXXI. That every city, town, liberty, parish, place, or district, not being a borough or part of a borough within the meaning of this act, shall for all the purposes of this act be annexed to and be treated and rated as part of the county within which the same is situate, or if such city, town, liberty, parish, place, or district be situate partly in one county and partly in another, then to and as such one of the same counties as one of her Majesty’s principal Secretaries of State shall, by writing under his hand and seal, direct, and shall contribute rateably to the expenses of the asylum of the county to which it is or shall be so annexed, whether such asylum has been provided before or

Every city, town, liberty, &c., not being a borough within the meaning of this act, to be annexed to and rated as part of the county within which the same is situate.

8 & 9 Vict. c. 126. shall be provided after the passing of this act, and shall for the purposes of this act be within the jurisdiction of the justices of such county ; and in every case in which any such city, town, liberty, parish, place, or district as aforesaid shall be annexed to a county in which an asylum has been already erected or provided, the present or any future committee of visitors of such asylum shall, as soon as conveniently may be after the passing of this act, or after such annexation shall be made, fix a sum to be paid by the city, town, liberty, parish, place, or district which is or shall be so annexed towards the expenses then already incurred in erecting or providing such asylum in due proportion to the population of such city, town, liberty, parish, place, or district, and of the county to which it shall be annexed, according to the last returns under the authority of Parliament, and the same shall be paid by every such city, town, liberty, parish, place, or district, to the treasurer of such asylum, and shall be levied and raised by such city, town, liberty, parish, place, or district by a rate to be made therein, in the same manner as any rate to be made therein for the purpose of levying or raising any other monies hereby directed to be levied and raised for the purposes of this act ; and the justices for the county to which such city, town, liberty, parish, place, or district is or shall be annexed as aforesaid, in general or quarter sessions, are hereby authorized and required to make such rate as aforesaid ; and the sum so paid by such city, town, liberty, parish, place, or district shall be applied by the treasurer of the asylum to whom the same shall have been paid in such manner as the committee of visitors shall direct, according to the provisions and for carrying into execution the purposes of this act.

Council of every borough to exercise the same duties, &c. of erecting asylums as are conferred upon justices, &c.

LXXXII. That the council of every borough which shall, by writing under their common seal, give notice to her Majesty's principal Secretary of State for the Home Department of the intention of such council to take upon itself the duties, powers, and authorities hereinbefore imposed or conferred upon or given to the justices of the borough, shall from thenceforth be subject to, and have and exercise all the duties, powers, and authorities of and for erecting and providing asylums, and carrying into execution the purposes of this act, which by this act are imposed or conferred upon or given to the justices of such borough, or upon any committee of visitors to be appointed as directed by this act, and all matters and things which in this act are required to be done at any general or quarter sessions may and shall thenceforth be done at any meeting of the council of such borough ; and all notices which by this act are required to be given to or by the clerk of the peace shall and may thenceforth be given to or by the town clerk of such borough.

Committee appointed by council to have same powers as

LXXXIII. That it shall and may be lawful for the council of any such borough to confer upon any committee to be appointed by such council such of the powers and authorities which by this

act are conferred upon any committee of visitors to be appointed thereunder as to such council shall seem fit.

8 & 9 Vict. c. 126.

committee of
visitors.

Interpretation of Words.

LXXXIV. That in this act the words and expressions following shall have the several meanings hereby assigned to them, unless there shall be something in the subject or context repugnant to such construction; (that is to say,)

Interpretation of
act.

“Borough” shall mean every borough, town, and city corporate having a quarter sessions, recorder, and clerk of the peace:

“County” shall mean every county, riding, and division of a county, county of a city, county of a town, and shall include every city, town, parish, place, or district by this act annexed to a county for the purposes hereof:

“Lunatic” shall mean every insane person, and every person being an idiot or lunatic, or of unsound mind:

“Pauper” shall mean every person maintained wholly or in part by or chargeable to any parish, union, county, or borough, or sent to any asylum, licensed house, or registered hospital by any justice or officiating clergyman and overseer or relieving officer:

“Justice” shall mean justice of the peace:

“Overseer” shall mean overseer of the poor of any parish, or any person acting as such:

“Relieving Officer” and “clerk of the guardians” shall respectively mean such relieving officer and clerk of the guardians, and any person acting as such respectively:

“Parish” shall mean any parish, township, vill, tithing, extra-parochial place, or place maintaining its own poor:

“Borough rate” shall mean a borough fund or rate, and any funds assessed upon or raised in or belonging to any borough in the nature of borough rates, and applicable to the purposes to which borough rates are applicable:

“County rate” shall mean a county rate, and any funds assessed upon or raised in or belonging to any county in the nature of county rates, and applicable to the purposes to which county rates are applicable:

“Clerk of the Peace” shall mean every clerk of the peace, and every person acting as such, or any deputy duly appointed:

“Medical Officer” shall mean every physician, surgeon, and apothecary who shall in his medical capacity superintend or visit any asylum:

“Treasurer of the Borough” shall mean every officer who has the custody of any monies raised by a borough rate:

“Treasurer of the County” shall mean every officer who has the custody of any county rate, or of any rate of any city, town, parish, place, or district by this act annexed to a county for the purposes hereof:

8 & 9 Vict. c. 126.

48 Geo. 3, c. 96.

“Asylum” shall mean any asylum, house, workhouse, building, or place already erected or provided under the provisions of an act passed in the forty-eighth year of the reign of his late Majesty King George the Third, intituled “An Act for the better Care and Maintenance of Lunatics, being Paupers or Criminals, in England,” or under the provisions of the said act hereby repealed, or subject to the provisions of the said acts or either of them, or to be erected or provided under the provisions of this act :

“Oath” shall include affirmation or other declaration or solemnity lawfully substituted for an oath in the case of quakers or other persons exempted by law from the necessity of taking an oath :

And words and expressions importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

Exemption.

Act not to extend to Bethlehem Hospital;

LXXXV. That nothing in this act contained shall extend to the Royal Hospital of Bethlehem, or any building erected adjacent thereto, and used therewith.

only to England and Wales.

LXXXVI. That this act shall extend only to England and Wales.

Alteration of act.

LXXXVII. That this act may be amended or repealed during this present session of Parliament.



SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A.)

FORM of AGREEMENT for uniting counties, boroughs, and lunatic asylums maintained by voluntary subscriptions [*as the case may be*] for the purpose of erecting or providing an asylum [*or additional asylum or accommodation*] for the reception of lunatics. 8 & 9 Vict. c. 126.

It is agreed this day of by and between the committees of justices of the peace for the county and borough, or counties and boroughs of or the committee of the subscribers of the lunatic asylum of [*as the case may be*], severally appointed to treat for the uniting of the said county and borough or counties and boroughs [*or lunatic asylum, [as the case may be]*], for the purposes of an act passed in the year of her Majesty Queen Victoria, intituled "An Act" [*here insert the title of this act*], that the said counties, &c. [*as the case may be*] shall henceforth be united for the purposes of the said act, and adopt in all respects the provisions, rules, orders, and regulations, and comply with all the requisitions, prescribed by the said act for counties or boroughs, &c. [*as the case may be*] uniting for those purposes; and that an asylum for the reception of lunatics, with all necessary buildings, courts, yards, and outlets, shall be immediately provided and properly fitted up and accommodated for the purposes mentioned in the said act; and that the necessary expenses attending upon the providing, building, fitting up, repairs, and maintenance of the said asylum shall be defrayed by the said county or counties and borough or boroughs, and voluntary lunatic asylum, so united, in the following proportions; (that is to say,)

The county of	four ninths of the said expenses.
The county of	two ninths of the same.
The borough of	one ninth of the same.
The lunatic asylum of	two ninths of the same [<i>as the case may be</i>].

And it is further agreed, that the committee of visitors to superintend the building, erection, and management of the said county lunatic asylum shall be formed in the following proportion: the justices of the peace for the said county of shall

8 & 9 Vict. c. 126. appoint

the justices of the peace for the borough of
 shall appoint and the subscribers to the said
 lunatic asylum of shall appoint : And hereunto
 we, the undersigned, being the major part of each of the com-
 mittees of justices of the peace for the said several counties and
 boroughs, and the major part of the committee of subscribers to
 the said lunatic asylum, do, on the part and behalf of the said
 counties and boroughs and lunatic asylum, set our hands and
 seals, this day of in the year

SCHEDULE (B.)

FORM of MORTGAGE and CHARGE upon the county or borough
 rates for securing the money borrowed.

WE, the Chairman of the Court of Quarter Sessions
 of the Peace of the county of holden at the
 day of and two other of her Majesty's justices of the
 peace for the said county, assembled in the said Court, [*or we,*
the mayor and council of the borough of as the
case shall be,] in pursuance of the powers to us given by an Act
 passed in the year of the reign of her Majesty Queen
 Victoria, intituled "An Act" [*here insert the title of this Act*],
 do hereby mortgage and charge all the rates and funds to be
 raised and paid within the said county [*or borough, as the case*
may be], under the description of County Rates or Borough
 Fund or Rates, with the payment of the sum of
 which of hath advanced and paid towards
 defraying the expenses of purchasing lands, and for building and
 repairing, &c. [*as the case shall be*] a lunatic ayslum for the said
 county [*or borough, or the united counties and boroughs of, &c.,*
as the case may be], and we do hereby grant and confirm the
 same rates and funds unto the said his executors,
 administrators, and assigns, for securing the repayment of the
 said sum of and interest for the same after the rate
 of per centum per annum, and do order the treasurer
 for such county, &c., [*or borough, &c., as the case shall be*], to
 pay the interest of the said sum of half-yearly, as
 the same shall become due, until the principal shall be dis-
 charged, at the times and in the manner agreed upon between
 the said and the said justices [*or the said mayor*
and council, as the case may be], pursuant to the directions of
 the said act.

SCHEDULE (C.)

No. 1.

NAMES of all PAUPER LUNATICS in the ASYLUM at
for the county or borough or counties or boroughs of
on the day of 184 .

Names of those charge- able to Union or Parish.	Date of Admission.	Names of those charge- able to County.	Date of Admission.	Names of Criminals.	Fit for Removal.

This is a correct return.
(Signed)

Medical Officer.

Dated

No. 2.

NAMES of all PRIVATE LUNATICS in the ASYLUM for the county
or borough or counties and boroughs of on the
day of 184 .

A. B.

C. D.

This is a correct return.
(Signed)

Medical Officer.

Dated

SCHEDULE (D.)

FORM OF ANNUAL RETURN.

A TRUE LIST of all LUNATICS and IDIOTS, chargeable to the parishes comprised within [such part of] the union [as is situate] [or to the parish of] in the county of specifying the name, sex, and age of each, and whether dangerous or otherwise, and for what length of time they have been supposed to be of unsound mind, and where confined, or how otherwise disposed of.

Name.	Age.	Sex.	Parish to which chargeable.	Where maintained.
			In a County or Borough Asylum, and what Asylum, and when sent thither.	
			In a licensed House, and where, and when sent thither.	
			In the Union or Parish Workhouse.	
			In Lodgings, or boarded out, and where.	
			Residing with Friends, and where.	
			Weekly Cost of Maintenance and Clothing.	
			Whether Lunatic or Idiot.	
			Dangerous to himself or others.	
			Of dirty Habits.	
			For what Length of Time supposed to be of unsound Mind.	
			Observations.	

Signed by me this day of 18 .
A. B.

Clerk to the board of Guardians of the said union,
[or overseer of the said parish].

SCHEDULE (E.) No. 1.

ORDER for the RECEPTION of a PAUPER PATIENT.

I, *C. D.* [*in the case of a justice of the peace, or in the case of a clergyman and relieving officer, &c., we*], the undersigned, having called to my [*or our*] assistance a physician [*or surgeon or apothecary, as the case may be*], and having personally examined *A. B.*, a pauper, and I, *C. D.* [*or we, in the case of a clergyman and relieving officer, &c.,*] being satisfied that the said *A. B.* is a lunatic [*or an insane person, or an idiot, or a person of unsound or imbecile mind*], and a proper person to be confined, I [*or we, as the case may be,*] hereby direct you to receive the said *A. B.* as a patient into your asylum, hospital, or house. Subjoined is a statement respecting the said *A. B.*

(Signed) (*C. D.*)

* A justice of the peace for the city or borough
of [*or an or the officiating clergy-*
man of the parish of]
Name.

The relieving officer of the union or parish
of [*or an overseer of the parish*
of]

* In the case of a lunatic not chargeable, to be signed by two justices.

STATEMENT.

Name of patient, and Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

Religious persuasion, as far as known.

Previous place of abode.

Length of time insane.

Whether first attack.

Age (if known) on first attack.

Whether subject to epilepsy.

Whether suicidal or dangerous to others.

Previous places of confinement (if any).

I certify that to the best of my knowledge the above particulars are correctly stated.

(Signed)

[*To be signed by the relieving officer or overseer.*]

Dated the day of One thousand eight
hundred

To superintendent of the asylum for the county of
 or the lunatic hospital of or proprietor of
the licensed house of
[*describing the asylum, hospital, or house.*]

■ & 9 Vict. c. 126.

FORM of MEDICAL CERTIFICATE in the case of PAUPER
PATIENTS.

I, being a fellow [*or licentiate*] of the Royal College of Physicians in London, [*or a graduate in medicine of the University of &c., or a member of the Royal College of Surgeons in London, or an apothecary duly authorized to practise by the Apothecaries Company in London,*] hereby certify that I have this day personally examined *A. B.*, the person named in the accompanying statement and order, and that the said *A. B.* is a lunatic [*or an insane person, or an idiot, or a person of unsound or imbecile mind*], and a proper person to be confined.

(Signed)

Name.

Place of abode.

Dated this
hundred and

day of

One thousand eight

SCHEDULE (E.) No. 2.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT.

I, the undersigned, hereby request you to receive *A. B.* a lunatic [*or an insane person, or an idiot, or a person of unsound or imbecile mind*], as a patient into your asylum. Subjoined is a statement respecting the said *A. B.*

(Signed)

Name.

Occupation (if any).

Place of Abode.

*Degree of Relationship (if any),
or other circumstance of
Connexion with the Patient.*

Name of patient, with Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

The religious persuasion, as far as known.

Previous place of abode.

Duration of existing attack.

Whether first attack.

Age (if known) on first attack.

Whether subject to epilepsy.

Whether suicidal or dangerous to others.

Previous places of confinement (if any).

Whether found lunatic by inquisition, and date of commission.

Special circumstances (if any) preventing the patient being examined, before admission, separately, by two medical practitioners.

Special circumstances (if any) preventing the insertion of any of the above particulars.

(Signed) *Name.*

Dated this day of One thousand eight hundred
and
To superintendent] of the asylum for the county
of [*describing the asylum*].

FORM of MEDICAL CERTIFICATE in the Case of a PRIVATE
PATIENT.

I, being a fellow [*or licentiate*] of the Royal College of Physicians in London, [*or a graduate in medicine of the University of &c., or a member of the Royal College of Surgeons in London, or an apothecary duly authorized to practise by the Apothecaries Company in London,*] hereby certify that, by the direction of justice of the peace in and for the I have this day separately from any other medical practitioner [*visited, if applicable, and*] personally examined *A. B.*, the person named in the accompanying statement and order, and that the said *A. B.* is a lunatic [*or an insane person, or an idiot, or a person of an unsound or imbecile mind*], and a proper person to be confined. Subjoined is a statement with respect to the mental and bodily condition of the above-named patient.

(Signed) *Name.*

Place of abode.

Dated this day of One thousand eight
hundred and

SCHEDULE (E.) No. 3.

NOTICE OF ADMISSION.

I hereby give you notice, That *A. B.* was admitted into this asylum as a private [*or pauper*] patient on the day of _____ and I hereby transmit a copy of the order and medical certificates [*or certificate*] on which he was received.

Subjoined is a statement with respect to the mental and bodily condition of the above-named patient.

(Signed)

Clerk of _____ asylum.
Dated the _____ day of _____ One thousand eight hundred and _____

STATEMENT.

I have this day seen and examined _____ the patient mentioned in the above notice, and hereby certify that with respect to mental state he [*or she*] _____ and that with respect to bodily health and condition he [*or she*] _____

(Signed)

Medical officer of _____ asylum.
Dated the _____ day of _____ One thousand eight hundred and _____

SCHEDULE (E.) No. 4.

FORM of NOTICE of DISCHARGE or DEATH.

I hereby give you notice, That _____ private [*or a pauper*] patient, admitted into this asylum on the day of _____ was discharged therefrom recovered [*or relieved, or not improved,*] by the authority of _____ [*or died therein, in the presence of* _____], on the day of _____

(Signed)

Clerk of the _____ asylum.
Dated the _____ day of _____ One thousand eight hundred and _____

In case of death, add “ I certify, that the apparent cause of ^{8 & 9 Vict. c. 126.} death of the said [as ascertained by *post mortem* examination (*if so*)] was.”

(Signed)
Medical officer of the _____ asylum.

SCHEDULE (F.)

QUARTERLY LIST of LUNATIC PAUPERS within the union of
[or the parish of _____] in the county or
borough of _____ not in asylums, registered hospitals, or
licensed houses.

Name.	Sex.	Age.	Lunatic from what Time.	Where placed.	When visited last.	In what Con- dition, and how often restrained.

I declare that I have personally examined the several persons whose names are specified in this list, on the days set opposite to their names, and that they are all [or all, except *A. B.*, *C. D.*, and *E. F.*] properly taken care of, and fit to be at large, and that these are the only pauper lunatics, to the best of my knowledge, of the union [or parish] of _____ who are not in an asylum or hospital or house duly licensed for lunatics.

(Signed) *A. B.*
Medical officer of the said union or
Parish of _____

Dated the _____ day of _____ One thousand eight
hundred and _____

County Lunatic Asylums in England.

SCHEDULE (G.) No. 1.

REGISTRY OF ADMISSIONS.—REGISTER OF PATIENTS.*

Date of last previous Admission if any.	No. in Order of Admission.	Date of Admission.	Christian Surname and Length.	Sex.		Age	Condi- tion as to Mar- riage.			Condition of Life and previous Occupation.	Previous Place of Abode.	County, Union, or Parish to which chargeable.	By whose Authority sent.	Dates of Medical Cer- tificates, and by whom signed.	Form of Mental Disorder.	Supposed Cause of Insanity.	Bodily Condition and Name of Disease, if any.	Epileptics.	Congenital Idiots.	Duration of existing Attacks.			Number of previous Attacks.	Age on First Attack.	Date of Dis- charge or Death.	Discharged.			Observations.			
				M.	F.		Married.	Single.	Widowed.											Years.	Months.	Weeks.				Recovered.	Relieved.	Not improved.		Died.		
1		1846: Jan. 3	William } Johnson }	1	..	23	..	1	..	Car- penter	..	..	..	..	Melan- cholia.	..	..	..	..	..	4	..	..	2	17	1846: Sept. 1.	1				
2																																
3																																
4		1848: June 9	William } Johnson }	1	..	25	..	1	7	3	..	1848: Dec. 2.	1					
5																																
6																																
7		1852: May 6	William } Johnson }	1	..	29	1	3	4	..	1853: June 8.	..					
8																																

* In the Case of an Asylum receiving both private and pauper Patients, a separate Register in the above Form to be kept for each Class.

9 & 10 Vict. c. 84.

9 & 10 Vict. c. 84.

An Act to amend the Law concerning Lunatic Asylums and the Care of Pauper Lunatics in England. [26th Aug. 1846.]

8 & 9 Vict. c. 126.

In what cases justices and others are to issue orders for confinement of lunatics.

WHEREAS doubts have been entertained whether under the provisions of an act of the last session of Parliament, intituled "An Act to amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and care of Pauper Lunatics, in England," it is incumbent on justices of the peace, and others therein specified, to issue orders for the reception into a lunatic asylum, or house licensed or hospital registered for the reception of lunatics, of all persons who shall be brought before them, or whom they shall visit in the manner prescribed by the said act, and of whose lunacy they shall be satisfied, or only of those persons of whose lunacy they shall be satisfied, and whom they shall deem proper persons to be confined, according to the tenor of the order set forth in the form numbered one in the schedule marked (E.) annexed to the said act (a): It is declared and enacted, that it shall not be deemed incumbent on any justice of the peace, or upon any clergyman, overseer, or relieving officer, to sign or issue such order as aforesaid, in all cases in which the physician, surgeon, or apothecary whom he or they shall have called to his or their assistance shall have signed the certificate according to the form numbered one in the said schedule (E.) as provided by the said act; but that every justice, clergyman, overseer, or relieving officer by whom any such order shall be signed or issued, in the case of every such person of whose lunacy he shall be satisfied, shall be bound, before signing the order, to satisfy himself of the propriety of confining such lunatic in a lunatic asylum, unless a medical certificate that such lunatic is a proper person to be so confined, in the same form as the medical certificate in the said schedule (E.) number one, shall have been signed by the medical officer of the union or parish to which the lunatic belongs, as well as by the said physician, surgeon, or apothecary, in which case such two medical certificates shall be received by every such justice, clergyman, overseer, and relieving officer as conclusive evidence that such lunatic is a proper person to be so confined.

Committees of justices appointed, or who may hereafter be appointed, for providing lunatic asylums, deemed to have been legally appointed.

II. And whereas by the said act it is enacted, that a committee of justices to superintend or to treat and enter into an agreement for the erecting or providing an asylum for the pauper lunatics of any county or borough which has no asylum for the pauper lunatics thereof shall be appointed at the time and in the manner prescribed by the said act, after public notice of the intention to appoint such committee given on or before

(a) See 8 & 9 Vict. c. 126, s. 48, *ante*, p. 735.

the general or quarter sessions for such county or borough next after the twentieth day of December one thousand eight hundred and forty-five (*a*); but the objects of the act have not been in all cases fully attained, and doubts have been entertained as to the power of the justices in the appointment of such committees, and as to the powers of such committees when appointed; be it declared and enacted, that a committee as aforesaid may and shall be appointed in every county and borough which has no asylum for the pauper lunatics thereof, and in which a committee has not been already appointed, or in which a committee once appointed has ceased or shall hereafter cease to exist without carrying into effect the purposes for which it was appointed, or, if appointed for the purpose only of treating and entering into an agreement, has reported or shall hereafter report that it is not practicable or expedient to enter into an agreement, or to that effect; and that, notwithstanding any committee already appointed or hereafter to be appointed may have been appointed either for the purpose only of superintending the erecting or providing an asylum, or for the purpose only of treating and entering into an agreement for erecting or providing an asylum, or for effecting the one or the other of the said purposes, as to the said committee may seem best, such committee shall be deemed to have been legally appointed under the said act, and duly empowered to carry into effect the purpose for which it has been or may be so appointed; and in any case in which the occasion for the appointment of a committee for any of the purposes aforesaid now exists or shall hereafter arise, public notice of the intention to appoint the same shall be given in the manner prescribed by the said act, on or before the general quarter session of the peace to be holden for such county or borough next after the passing of this act, or next after the occasion for the appointment thereof shall have arisen, as the case may be: provided nevertheless, that notice at any subsequent general quarter session of the peace for such county or borough of the intention to appoint any such committee, and the appointment of a committee in pursuance thereof, shall be valid.

III. That when any committee hath been or shall hereafter be appointed for one of the aforesaid purposes only, it shall be lawful for the justices, if they shall think fit, at any general quarter session of the peace after the like public notice as is required in the case of the first appointment of the committee, to enlarge the powers of the committee, so as to authorize the committee to effect the one or the other of such purposes, as to the said committee may seem best, and, if necessary, under the provisions of the said act, to appoint additional members of the said committee; and every such committee shall be deemed to

Powers of committees may be enlarged by justices.

(*a*) See 5 & 9 Vict. c. 126, s. 3, *ante*, p. 710.

9 & 10 Vict. c. 84.

Until committees of visitors shall be appointed for any county, &c., the committee appointed for providing an asylum shall act as such.

Committee of visitors to be appointed by justices and subscribers to lunatic asylums.

Further provision for the temporary care of pauper lunatics.

have been legally appointed under the said act, and duly authorized to carry into effect the one or the other of the said purposes, as to the said committee may seem best.

IV. That until a committee of visitors shall, under the provisions of the said act or of this act, be appointed on behalf of any county or borough, counties or boroughs, the committee appointed or hereafter to be appointed, either for superintending the erecting or providing, or for treating and entering into an agreement for erecting or providing an asylum, or for effecting the one or the other of those purposes, as to the said committee may seem best, shall have, on behalf of the county or borough by which such committee shall have been appointed, all the powers, as well of contracting with the proprietors of any house licensed for the reception of lunatics, as otherwise, of a committee of visitors appointed under the said act, save that a committee for the purpose only of treating and entering into an agreement as aforesaid shall not have power to take measures towards erecting or providing a lunatic asylum for the sole use of the county or borough for which it shall have been appointed.

V. That whenever any agreement shall have been entered into, signed, and reported, as in the said act is mentioned, the justices of every county to which such agreement shall relate, assembled at the general or quarter sessions to which such report shall be made, and the justices of every borough to which such agreement shall relate, shall, at a special meeting to be held within twenty days after such agreement shall have been reported as aforesaid, and the subscribers of every lunatic asylum to which such agreement shall relate, or the majority of such subscribers, present at a meeting to be holden within twenty-eight days after the signing of such agreement, and of which notice shall have been given by public advertisement in some newspaper circulated within the place in which such lunatic asylum shall be situated, shall appoint a committee of visitors, in the same manner and under the same regulations and with the powers mentioned in the said act in respect of a committee of visitors appointed for the like purpose at the times mentioned in the said act, and all the provisions in the said act relating to committees of visitors shall apply to the said committee, as far as the same may be applicable.

VI. And whereas certain powers are given by the said act to every committee of visitors to contract for certain purposes, for a limited time and under certain restrictions, with the proprietors of any house licensed for the reception of lunatics: And whereas it is expedient to enable further provision to be made for the temporary care of pauper lunatics (*a*); be it enacted, That it shall be lawful for any committee of visitors to

(*a*) See 8 & 9 Vict. c. 126, s. 29, *ante*, p. 725.

make provision, either in manner mentioned in the said act or otherwise, for the temporary care of pauper lunatics, subject to the approval, restrictions, limitations, and provisoes mentioned in the said act with respect to such contracts as aforesaid, in as far as such limitations and restrictions and provisoes are applicable to any provision other than a contract with the proprietor of a house licensed as aforesaid, and the expenses of making such provision shall be paid out of the same monies or funds and in the same manner as is provided in the said act in the case of contracts with such proprietors as aforesaid; and it shall be lawful for the guardians and overseers of any union or parish, with the consent of the Poor Law Commissioners for England and Wales, to contract with any such committee of visitors for the use and occupation of all or any part of a workhouse as a temporary asylum for pauper lunatics; and during such temporary occupation such workhouse, or the part of it so occupied, shall be subject to the same law as a workhouse taken for the reception of pauper chronic lunatics under the provisions of the said act (*a*).

9 & 10 Vict. c. 84.

VII. And whereas by the said act provision is made that in certain cases therein specified more than one asylum shall be erected or provided in a county or borough, and it hath been doubted whether a separate committee of justices should be appointed in reference to every such asylum (*b*); be it declared and enacted, That the true intent and meaning of the said act is, that a separate committee of justices be appointed in every such county or borough for every such asylum, each of which committees shall have all the powers and be subject to all the provisions of the said act with regard to the asylum for which it is appointed, as if it were the only asylum for that county or borough: Provided always, that it shall be lawful for the justices of the county or borough, if they shall think fit, with the approval of one of her Majesty's principal Secretaries of State, to appoint the same committee for two or more such asylums.

Separate committees to be appointed for every such asylum.

Justices may appoint the same committee for two asylums.

VIII. That all the powers and remedies given by the said act of the last session of Parliament, and the provisions therein contained for recovering money ordered by justices of the peace, under the provisions of the same act, to be paid by the overseers of any parish, shall extend to the recovery of any money which may have been ordered by any justices of the peace under the provisions of an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics, in England," to be paid by the overseers of any parish, and which at the time

For recovering money under orders made by justices under provisions of 9 Geo. 4, c. 40.

(*a*) See 8 & 9 Vict. c. 126, s. 29, *ante*, p. 725.

(*b*) *Id.* s. 8, *ante*, p. 712.

9 & 10 Vict. c. 84. of the passing of this act may be due, or may thereafter become due by virtue of any such order (a).

Extending powers of borrowing money.

IX. That the powers given by the said act to the justices of every such county and to the council of every such borough to borrow money toward defraying the expenses of carrying into effect the purposes of the said act, or of any act thereby repealed, whenever it should appear, as therein provided, that such expenses would exceed the several sums of five thousand pounds or two thousand pounds, in the several cases therein specified, shall be extended to all cases in which it shall appear to the said justices or council respectively expedient to borrow money toward defraying such expenses, whether or not it shall appear that such expenses will exceed the sum of five thousand pounds or two thousand pounds, as the case may be; and such money may be raised in any sum or sums at any rate of interest not exceeding the yearly rate of five pounds in the hundred (b).

Construction of terms.

X. That the words "furnishing and completing" the asylum, in the said act, shall be held to include the purchase of clothing sufficient for opening the said asylum for the reception of patients.

Act to be construed with 8 & 9 Vict. c. 126.

XI. That this act shall be construed with and as part of the said act of the last session of Parliament.

STATUTES RELATING TO LUNATIC ASYLUMS AND INSANE CRIMINALS IN IRELAND.

1 & 2 Geo. 4, c. 33.

1 & 2 Geo. 4, c. 33.

An Act to make more effectual Provisions for the Establishment of Asylums for the Lunatic Poor, and for the Custody of Insane Persons charged with Offences in Ireland. [28th May, 1821.

57 Geo. 3, c. 106.

1 Geo. 4, c. 98.

WHEREAS an act was made in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled "An Act to provide for the Establishment of Asylums for the Lunatic Poor in Ireland;" and which act was amended by an act made in the last session of Parliament; and it is expedient that the provisions of the said acts should be consolidated, and that the same should be amended; and it is also expedient that the custody of insane persons, charged with offences in Ireland, should be regulated in like manner as in England: it is therefore enacted, that, from and after the expiration of ten days after the

(a) See 8 & 9 Vict. c. 126, s. 68, *ante*, p. 750.

(b) See *ib.* s. 34, *ante*, p. 728.

passing of this act, the said recited acts of the fifty-seventh year of his late Majesty's reign, and of the last session of Parliament, shall be and the same are hereby repealed: Provided always, that all matters and things, at any time heretofore done under the said recited acts, or either of them, or for the carrying the said acts, or either of them, into execution, shall be and remain as good, valid, and effectual, to all intents and purposes, as if this act had not been made: and that all asylums erected or established under the said recited acts shall in future be regulated under the directions of this act.

1 & 2 Geo. 4,
c. 33.

Matters done
under these acts
to remain valid.

II. That at any time after the passing of this act, it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice and consent of his Majesty's Privy Council in Ireland, to direct and order that any number of asylums for the lunatic poor in Ireland shall be erected and established in and for such districts in Ireland as to the said Lord Lieutenant or other chief governor or governors and Privy Council shall seem expedient; and that every such district shall and may consist either of the whole of two or more counties, or of one or more county or counties, and one or more county or counties of cities or towns, or of one county, or county of a city, or county of a town only, and no more; but shall not in any case include part only of any county, county of a city or town; and that all lunatic poor within every such district respectively shall be maintained and taken care of in the asylum belonging to such district; and that every such asylum established or to be established for any district, consisting of more than one county, or one county of a city or county of a town, shall be sufficient to contain such number of lunatic poor, not being less than one hundred nor more than one hundred and fifty in any one asylum, as shall seem expedient to such Lord Lieutenant or other chief governor or governors and Privy Council; and that, where any such district shall consist of only one county, or county of a city or county of a town, and no more, every such asylum shall be sufficient to contain such number of lunatic poor, not being less than fifty, as shall seem expedient to such Lord Lieutenant or other chief governor or governors and Privy Council; and every order of council to be made for any such purpose shall be published in the *Dublin Gazette* (a).

Lord Lieutenant
empowered to
direct any num-
ber of asylums
for the lunatic
poor to be
erected and
established in
several dis-
tricts, consist-
ing either of
two or more
counties or of
one county or
town only.

Capacity of
asylums.

III. That, at any time after any such order of council shall be made and published in the *Dublin Gazette*, it shall and may be lawful for the grand jury of any and every county, county of a city, and county of a town, within any such district, or of which such district shall consist, at any assizes, to present such sum or sums of money to be raised off such county, county of a city, or county of a town respectively, as shall be requisite for

Grand jury, at
assizes, to pre-
sent such sum
as shall be re-
quisite for such
asylums.

(a) See 8 & 9 Viet. c. 107, s. 13.

1 & 2 Geo. 4,
c. 33.

Lord Lieutenant
may direct
money to be
advanced out of
the consolidated
fund, for esta-
blishing such
asylums;

and may ap-
point directors
and commis-
sioners for su-
perintending
the asylums,

No salary to
director, &c.
allowed.

defraying the expenses of erecting and establishing such asylum, and for maintaining the same, to such amount and in such proportions as shall be directed by any order to be made by the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland.

IV. That it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland, to order and direct that any sum or sums of money shall be advanced and issued and paid out of the growing produce of the consolidated fund of the United Kingdom arising in Ireland, to such person or persons as shall be named in any such order of council, or into the Bank of Ireland, in the names of any such person or persons, to be paid and applied for the purpose of erecting and establishing any such asylum for the lunatic poor in any such district in Ireland, in such sums and at such times, and in such manner and proportions, and under such rules, regulations, terms, and conditions, and to annex such penalties for breach of such rules, regulations, terms, and conditions, as to such Lord Lieutenant or other chief governor or governors and Privy Council shall seem best suited for promoting the beneficial purposes of this act; and after any such asylum shall be fit for the reception of such lunatic poor, the grand jury of every county, county of a city, or county of a town, within the district in and for which such asylum shall be erected and established, or of which such district shall consist, shall present such sum or sums of money at the several ensuing assizes, for the repayment of the money so advanced, and at such times and in such proportions as shall be directed by the Lord Lieutenant or other chief governor or governors of Ireland.

V. That it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland, to nominate and appoint such persons as he and they shall think fit and proper, to be governors or directors of every or any such asylum, in any such district; and also to nominate and appoint any persons not exceeding eight in number, to be commissioners for general controul and correspondence, and for the superintending and directing the erection, establishment, and regulation of all such asylums; and also that it shall and may be lawful for the Lord Lieutenant, or other chief governor or governors of Ireland, and Privy Council, to make, frame, and establish, or, upon the suggestion and recommendation of such commissioners for general controul and correspondence, to adopt and authorize any rules and regulations for the good conduct and management of such asylums in general, or of any such asylum in particular: Provided always, that every person who shall be appointed to be a governor or director of any such asylum, or to be one of the commissioners for such general controul and correspondence,

shall act without any salary, fee, reward, or emolument whatsoever.

1 & 2 Geo. 4,
c. 33.

VI. That, in each and every case, where an order of council for the erection of a district lunatic asylum shall have been made and published in the *Dublin Gazette* as in this act is provided, the said commissioners for general controul and correspondence shall have full power and authority to rent or purchase any houses, buildings, lands, tenements, or hereditaments, on the scite or scites of which it shall be proposed to erect or maintain any such district lunatic asylum; and any houses, lands, tenements, buildings, or hereditaments, so rented or purchased, shall and may be conveyed to the said commissioners, or any three of them, and to their heirs and successors, in trust to and for the uses and purposes of the said district lunatic asylum.

Commissioners may rent and purchase premises for erecting lunatic asylums.

VII. That it shall be lawful for the grand jury of every county, county of a city, or county of a town, in Ireland, in or for which, wholly or in part, any such asylum hath been or shall be established, or hath been or shall be ordered or directed so to be under the provisions of the said recited acts or this act, and such grand jury are hereby required, at the assizes next ensuing the day or time when such purchase shall be made, or such rent shall become due, or any expenditure shall have been made for supplying or maintaining any such asylum, or the officers or attendants thereof, or the patients therein, or as soon after as shall be requisite, and so from time to time whenever the case shall happen, to present to be raised off any such county, county of a city, or county of a town, such sum or sums of money as shall be necessary for completing such purchase, or paying such rent or rents, or any such disbursements and expenditures, or any of them, or any part or proportion thereof, to be ascertained by an order to be made by the Lord Lieutenant, or other chief governor or governors, in council as aforesaid; and if the said grand jury shall refuse to make any such presentment, the Court shall order the sum or sums which ought to be so presented, to be raised as if the same had been so presented, and the same shall be raised and paid accordingly.

Grand juries at assizes, shall present for expenses, &c., of asylums.

VIII. That it shall and may be lawful to and for all bodies politic and corporate, trustees, guardians of infants, committees of lunatics, femmes covert with their husbands, and all other persons whatsoever, who are or shall be seised or possessed of, or interested in, or entitled unto any estate or interest whatsoever in the lands, houses, grounds, tenements, buildings, or hereditaments which by the said commissioners shall be thought necessary to be rented or purchased for any of the purposes of this act, by deeds indented and enrolled, to demise, sell, and convey all and any such grounds, houses, tenements, or hereditaments, or any part thereof, and all the respective estates and interests therein, to the said commissioners, or any three of them, and their heirs and successors; and that all contracts, agreements,

Bodies corporate, &c., may sell and convey premises for such purposes.

1 & 2 Geo. 4,
c. 33.

bargains, sales, and conveyances that shall be so made, shall be good and valid in law to all intents and purposes whatsoever; and that such commissioners, and their heirs and successors, shall be trustees of all such houses, lands, tenements, and hereditaments as shall be conveyed to or vested in them under and by virtue of this act, for the purposes herein provided, and for no other purpose whatsoever.

Sheriffs to proceed in making valuations of premises, as they are empowered to do in cases of valuation of scites of gaols under 50 Geo. 3, c. 103.

IX. And for the better ascertaining the rent or value of any such lands, tenements, or hereditaments as may be rented or purchased for the purposes of this act: Be it further enacted, That it shall and may be lawful to and for the said commissioners, or any three of them, to issue a warrant or warrants, or precept or precepts, to the sheriff of the county, or county of a city, or county of the town wherein the lands, tenements, and hereditaments proposed to be purchased are lying and being; and such sheriff or sheriffs respectively shall thereupon proceed to take such steps for the valuation of such lands, tenements, or hereditaments, as are prescribed for the valuation of lands, tenements, or hereditaments taken for the scites of gaols, by virtue of an act passed in the fiftieth year of the reign of his late Majesty King George the Third, intituled "An Act for repealing the several Laws relating to Prisons in Ireland, and for re-enacting such of the Provisions thereof as have been found useful, with amendments, or of any Act or Acts for amending the same."

Powers vested in commissioners for building gaols, to extend to commissioners for building lunatic asylums.

X. That all the powers vested in the commissioners for building gaols in the said recited act of the fiftieth year of his late Majesty's reign, or of any act for amending the same, shall be and are hereby vested in the commissioners of general controul and correspondence for the district lunatic asylums of Ireland, or any three of them, so far as the same relate to the holding a Court, and proceeding to the valuation of the lands, tenements, and hereditaments, on the scite of which any district lunatic asylum shall or may have been, or may be erected, under and by virtue of this act, or the said recited acts.

Provisions of recited act, 50 Geo. 3, c. 103, affecting purchase and valuation of scites, to extend to this act.

XI. That all and every of the provisions of the said recited act of the fiftieth year of his said late Majesty's reign, or any act for amending the same, which affect or relate to the purchase and valuation of lands, tenements, or hereditaments, for the scites of gaols or prisons, or to any notices, proceedings, summonses, verdicts, and judgments, or to any conveyances or enrolments, or to the lodgments of consideration money, or to petitions to the High Court of Chancery in Ireland, or to any payments of purchase money, or to any rights and titles of parties interested, shall be held to apply to the valuation of lands, tenements, or hereditaments rented or taken for the scites of lunatic asylums under this act, or the said hereinbefore recited acts; and such verdicts, judgments, and conveyances shall be binding and conclusive to all intents and purposes whatsoever.

XII. Provided always, and be it further enacted, That, in every case, when a jury shall be impaneled and sworn for the valuation of any lands, tenements, or hereditaments rented or taken for the scite of any lunatic asylum aforesaid, it shall and may be lawful to and for the said commissioners, or any three of them, to appoint, by an instrument in writing under their hands and seals, by and with the approbation of the Lord Lieutenant, or other chief governor or governors, in council, not less than six persons, nor more than twelve, three of whom shall be competent to act on behalf of the said commissioners, in presiding at such Court, and receiving the verdicts of such jury as shall be held and impaneled for such valuation, such persons so appointed and approved of being magistrates for one or more of the counties, counties of cities, or counties of towns, comprehended within the district for which asylums respectively have been or shall be erected, or of the county, county of a city, or county of a town, of which such district shall consist; and the acts of such magistrates, or any three of them, shall be of equal force and validity with those of the commissioners themselves, so far as relates to holding a Court for such valuation, and performing the duties necessary for such valuation, as prescribed by the said recited act of the fiftieth year of his late Majesty's reign, or any act or acts for amending the same.

1 & 2 Geo. 4.
c. 33.

Persons to be appointed by commissioners, with consent of the Lord Lieutenant, to preside in Court, to receive verdicts of juries in cases where questions of valuation are so referred.

XIII. That the rent or purchase money, so fixed and ascertained as aforesaid, shall be provided for out of the general funds for the erection of and maintenance of lunatic asylums by virtue of this act.

Rent or purchase money to be paid out of the general funds.

XIV. That, before the twenty-fifth day of March one thousand eight hundred and twenty-two, and so in every succeeding year before the twenty-fifth day of March in each year, the governors or directors of the several lunatic asylums in Ireland, which have been or shall be established under the said recited acts hereby repealed, or under this act, or the treasurer or other proper officer of such lunatic asylum respectively, shall yearly and every year make out and deliver and transmit to the commissioners for auditing the public accounts of Ireland, a return containing a statement and accounts of all the funds intrusted to the governors or directors of every such lunatic asylum respectively, for the benefit of every such asylum, and of the application of such funds, for the year ending on the twenty-fifth day of December preceding such twenty-fifth day of March, with the balances of the debts and credits, and of the whole funds of every such asylum respectively, on such twenty-fifth day of December; and also the number of patients or persons received into and sent out of every such asylum respectively during such preceding year, and the number of patients remaining therein at the time of such return, and the number and names of the physicians, surgeons, officers, servants, and other persons employed in or about the management of every

A yearly account of the funds and expenditure of every such asylum, shall be laid before commissioners of accounts.

1 & 2 Geo. 4,
c. 33.

such asylum respectively, and all such other matters and things relating to the management, revenue, and expenditure of every such asylum respectively, as shall from time to time be required by the said commissioners of accounts, for the full disclosure of the state of every such asylum respectively; and all the said returns, statements, and accounts shall be signed by the secretary, treasurer, or chief officer for the time being of every such asylum respectively, and shall be confirmed as just and true statements by the signature of three governors or directors of every such asylum respectively.

Commissioners
for auditing
accounts under
this act shall
exercise all the
powers of
52 Geo. 3, c. 52.

XV. That the said commissioners of accounts shall have and they are hereby authorized and empowered to use and exercise all such powers for the obtaining of the accounts, statements, and returns by this act required to be made relating to the said lunatic asylums, and in the exercising and stating of the accounts of the receipt and expenditure, and of the debts and credits of every such asylum respectively, as are given to or vested in the said commissioners of accounts under and by virtue of an act made in the fifty-second year of the reign of his late Majesty King George the Third, intituled "An Act to provide for the speedy and regular examination and audit of the public accounts of Ireland," with respect to the matters and things required to be done by the said commissioners of accounts under the said recited act; and all and every persons and person shall be subject and liable to such pains and penalties for any disobedience to any orders of the said commissioners of accounts in the execution of this act, as are inflicted or imposed by the said recited act on persons disobeying the orders of the said commissioners under the said recited act.

Persons indicted
and acquitted
on the ground
of insanity at
the time of com-
mission of the
crime, may be
detained in cus-
tody.

XVI. And whereas persons charged with offences in Ireland may have been or may be of unsound mind at the time of committing the offence wherewith they may have been or shall be charged, and by reason of such insanity may have been or may be found not guilty of such offences; and it may be dangerous to permit persons in such cases to go at large: Be it therefore enacted, that, in all cases where it shall be given in evidence on the trial of any person in Ireland, charged with treason, murder, or any other offence, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the Court before whom the trial shall be had, shall, if it shall be thought necessary or proper, order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until the pleasure of the Lord Lieutenant or other chief governor or governors of Ireland for the

time being, shall be known, and it shall thereupon be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being, to give such order for the safe custody and care of such person, during the pleasure of the Lord Lieutenant or other chief governor or governors of Ireland for the time being, in such place and in such manner as shall seem fit; and in all cases where any person before the passing of this act has been acquitted of any such offences, on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried, or otherwise, and shall remain in custody at the time of the passing of this act, it shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being, to give the like order for the safe custody and care of such person, as the Lord Lieutenant or other chief governor or governors of Ireland is or are by this act enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

1 & 2 Geo. 4,
c. 33.

XVII. That, if any person indicted in Ireland for any offence shall be found to be insane, by a jury lawfully impaneled for that purpose, so that such person cannot be tried upon such indictment; or if, upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom such person shall be brought to be tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody, and to be taken care of, until the pleasure of the Lord Lieutenant or other chief governor or governors of Ireland for the time being, shall be known; and if any person charged with any offence shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a jury to be impaneled, to try the sanity of such person; and if the jury so impaneled shall find such person to be insane, it shall be lawful for such Court to order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until the pleasure of the Lord Lieutenant or other chief governor or governors of Ireland for the time being shall be known; and in all cases of insanity so found, it shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being, to give the like order for the safe custody and care of such person so found to be insane, as the Lord Lieutenant or other chief governor or governors of Ireland is or are by this act enabled to give in the cases of persons acquitted on the ground of insanity.

Criminals found insane at the time of their indictment, may be detained under order of Courts, and direction of Lord Lieutenant.

XVIII. Provided always, and be it enacted, That, whenever and as soon as there shall be a lunatic asylum built or main-

Such insane criminals shall be detained in

1 & 2 Geo. 4,
c. 33.

lunatic asylums,
when they are
provided.

tained, either wholly or in part, in any county, county of a city, or county of a town, wherein such prisoner, in any of the cases aforesaid, shall be tried or found insane as aforesaid, then and from thenceforth such insane person shall without delay be removed to such asylum, and shall be kept therein so long as such prisoner shall be detained in custody.

6 Geo. 4, c. 54.

6 Geo. 4, c. 54.

An Act to amend an Act of the First and Second Years of his present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland. [22nd June, 1825.]

1 & 2 Geo. 4,
c. 33.

After any asylum shall be fit for the reception of the lunatic poor, the Lord Lieutenant may direct any sum not exceeding 10,000*l.* per quarter to be issued out of the consolidated fund for the support of such establishment.

WHEREAS an act was made in the session of Parliament held in the first and second years of the reign of his present Majesty, intituled "An Act to make more effectual Provision for the Establishment of Asylums for the Lunatic Poor, and for the Custody of Insane Persons charged with offences in Ireland;" and it is expedient that further provision should be made for the opening, carrying on, maintaining, and supporting of such asylums: It is therefore enacted, that from and after the passing of this act, it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of his Majesty's Privy Council in Ireland, from time to time and at any time or times after any asylum erected or to be erected in pursuance of the said recited act shall be fit for the reception of lunatic poor, to order and direct that any sum or sums of money, not exceeding the sum of ten thousand pounds in any one quarter of a year, shall be advanced and issued and paid out of the growing produce of the consolidated fund of the United Kingdom arising in Ireland, to such person or persons as shall be named in any such order of council, or into the bank of Ireland, in the name or names of any such person or persons, to be from time to time paid and applied for the purpose of opening and carrying on and of maintaining and supporting any such asylum from time to time in any district in Ireland, to such amount and at such times, and in such manner and proportions, and upon such estimates, and under such rules, regulations, terms, and conditions, and with such penalties for breach of such rules, regulations, terms, and conditions, as to such Lord Lieutenant or other chief governor or governors, and Privy Council, shall seem best suited for promoting the beneficial purposes of any such asylum, according to the said recited act and this act.

Grand jury of

II. That it shall be lawful for the grand jury of any and

every county, county of a city, or county of a town in Ireland, in or for which, either wholly or in part, any such asylum hath been or shall be erected, and such grand jury are hereby required, at the assizes next after the date of any such order for the advance of money for the opening, carrying on, or maintaining any such asylum, or as soon after as they shall be thereto required, and from time to time, whenever the case shall happen, to make a presentment for the raising off any such county, county of a city, or county of a town, such sum or sums of money as shall be necessary for the repayment of any such sum or sums so advanced, or any part thereof, at such times and in such proportions as shall be directed and ascertained by any order or orders to be made by the Lord Lieutenant or other chief governor or governors of Ireland in council as aforesaid; and if any such grand jury shall neglect or refuse to make any such presentment, the Court shall order the sum or sums which ought to be so presented to be raised, as if the same had been so presented, and the same shall be raised and paid accordingly.

7 Geo. 4, c. 54.

the county to make presentment for the repayment of the money so advanced.

7 Geo. 4, c. 14.

An Act for the further Amendment of an Act of the First and Second Years of his present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland.

7 Geo. 4, c. 14.

[11th April, 1826.]

WHEREAS, by an act made in the session of Parliament holden in the first and second years of the reign of his present Majesty, intituled "An Act to make more effectual Provision for the Establishment of Asylums for the Lunatic Poor, and for the Custody of Insane Persons charged with Offences in Ireland," it is among other things enacted, that, at any time after the passing of the said act it shall be lawful for the Lord Lieutenant, or other chief governor or governors of Ireland, by and with the advice and consent of his Majesty's Privy Council in Ireland, to direct and order that any number of asylums for the lunatic poor in Ireland shall be erected and established in and for such districts in Ireland as to the said Lord Lieutenant, or other chief governor or governors, and privy council, shall seem expedient: And whereas several such asylums have been erected and established, and it may be expedient in certain cases to change or alter such districts, and to erect and establish new or additional asylums in lieu of or in addition to any asylum or asylums erected under the said act: It is therefore enacted, that, from and after the passing of this act, it shall and may be lawful for

1 & 2 Geo. 4, c. 33.

Lord Lieutenant and council may establish

7 Geo. 4, c. 14.

new or additional asylums; and change the district in which any asylum shall have been erected.

Districts shall be constituted as directed by the recited act, and asylums shall be under the regulations of that act and 6 Geo. 4, c. 54.

Manner of proceeding where any county, &c., shall be taken out of any district, and removed to any new district.

the Lord Lieutenant, or other chief governor or governors of Ireland, by and with the advice and consent of his Majesty's Privy Council in Ireland (from time to time and at all times whenever and so often as shall seem expedient to him or them so to do), to direct and order that any asylum or asylums for the lunatic poor in Ireland shall be entered and established in any place, or in and for any district in Ireland, in lieu of or in addition to any asylum or asylums erected under the authority of the said recited act; and from time to time to alter or change the district or places in or for which any such asylum or asylums shall have been or shall be erected under the authority of the said recited act or this act: Provided always, that every district in which any such asylum or asylums shall be erected and established under the said recited act or this act, shall be constituted and composed in such manner as is directed by the said recited act; and that every such asylum shall be sufficient to contain such numbers as are required and directed by the said recited act; and that the expense of erecting, establishing, and maintaining every such asylum shall be raised in such manner as is required and directed; and that every such asylum shall be subject to all such rules and regulations as are contained in the said recited act, and in an act made in the last session of Parliament for amending the said recited act; and that the said acts and this act shall be construed together as one act.

II. That, if it shall at any time happen that any money shall have been raised off any county, county of a city, or county of a town, or any part thereof, towards defraying the expenses of erecting, establishing, maintaining, or supporting of any lunatic asylum, and that by reason of any change of the district or place in or for which such asylum shall have been established, such county, county of a city, or county of a town, or any part thereof, shall be taken out of the district liable to be assessed for such expenses, then and in such case any sum or sums of money which shall have been raised off such county, county of a city, or county of a town, or such part thereof as aforesaid, shall be raised off any and every county, county of a city, or county of a town, or any part or parts thereof, which shall remain within such district, and all and every sum and sums which shall be so raised shall be repaid to the treasurer of the county, county of a city, or county of a town which shall have been removed from such district; and that, whenever any county, county of a city, or county of a town, or any part or parts thereof, which shall have been comprised in any former district, shall, by reason of any such change as aforesaid, be comprised in or shall form part of any new district, such county, county of a city, or county of a town, or such part thereof, shall be and is hereby declared to be subject and liable towards the defraying the expenses of any asylum in or for such new district, in like manner as is directed

by the said recited acts, or either of them, and as if such county, county of a city, or county of a town, or such part thereof, had been originally comprised in or formed part of such new district. 7 Geo. 4, c. 14.

III. That from and after the passing of this act it shall and may be lawful to and for every archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, or prebendary, to grant, by his or their deed or deeds respectively, any piece or parcel of land, not exceeding six acres plantation measure, as and for the scite of a lunatic asylum, in such and the like manner as such archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, or prebendary is empowered to do with respect to land for the scite of a church and churchyard in and by an act passed in the Parliament of Ireland in the thirty-third year of the reign of King George the Second, among other things, to encourage the building of new churches: Provided always that such grant shall and may be made either to the churchwardens of the parish in which such land shall be situate, and their successors for ever, according to the directions of the said act of the thirty-third year of King George the Second, or to the commissioners for general controul and correspondence appointed under the said recited act of the first and second years of his present Majesty's reign, and their heirs and successors, as the Lord Lieutenant, or other chief governor or governors of Ireland, with the advice of his Majesty's Privy Council in Ireland, shall order and direct; and such grant shall be good and effectual against such archbishop, bishop, dean, dean and chapter, archdeacon, dignitary, or prebendary, and his and their successor and successors, and the churchwardens of such parish and their successors for ever, or such commissioners as aforesaid, and their heirs and successors, shall be and are hereby empowered and made capable of receiving and enjoying the benefit of any such grant for the purpose aforesaid, in like manner as by the said acts or either of them is provided with respect to any land granted for the scite of a church and churchyard or lunatic asylum respectively.

Archbishops, &c., may grant land for lunatic asylums, in like manner as for churches under 33 Geo. 2, (I.). c. 11.

Conveyance shall be made either to churchwardens, as under that act, or to the commissioners under 1 & 2 Geo. 4, c. 33.

11 Geo. 4 & 1 Wm. 4, c. 22.—29th May, 1830.

An Act for appropriating the Richmond Lunatic Asylum in Dublin to the Purposes of a District Lunatic Asylum, amended by 1 Wm. 4, c. 13. 11 Geo. 4, and 1 Wm. 4, c. 22.
[11th March, 1831.]

1 & 2 Vict. c. 27.

1 & 2 Victoria, c. 27.

An Act to make more effectual Provision for the Prevention of Offences by insane Persons in Ireland. [11th June, 1838.]Justices to com-
mit dangerous
lunatics.

WHEREAS it is expedient to make provision for the better prevention of crime being committed by persons insane in Ireland; it is therefore enacted, That if any person shall be discovered and apprehended in Ireland under circumstances denoting a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, it shall be lawful for any two justices of the peace of the county, county of a city, county of a town, city or town, and liberties, before whom such person may be brought, to call to their assistance any legally qualified physician, surgeon, or apothecary; and if upon view and examination of the said person so apprehended, or from other proof, the said justices shall be satisfied that such person is a dangerous lunatic or a dangerous idiot, it shall be lawful for the said justices, by warrant under their hands and seals, to commit such person to the gaol of such county, county of a town, city or town, and liberties, there to be kept in strict custody until or unless such person shall be discharged by the order of two justices of the peace, one whereof shall be one of the justices who has signed such warrant, or by the assistant barrister presiding at the county general quarter sessions, or by one of the judges of her Majesty's superior Courts in Dublin, or by the Lord Chancellor or Lords Commissioners of the Great Seal, or until such person shall be removed to the proper lunatic asylum by order of the Lord Lieutenant or other chief governor or governors of Ireland as hereinafter provided (a).

Lord Lieutenant
may direct per-
sons under sen-
tence of impri-
sonment or
transportation
to be removed to
a lunatic
asylum.

II. That it shall be lawful for the said Lord Lieutenant or other chief governor or governors, if he or they shall so think fit, to direct, by warrant under his or their hand or hands, that any person who may be detained in custody in any gaol by virtue of any such warrant as aforesaid, or any person who may be, under any sentence of imprisonment or transportation, or under any warrant in default of surety to keep the peace, in any gaol or place of confinement, and in respect of whom it shall be certified by two physicians or surgeons or a surgeon and physician that such person is or has become insane, shall be removed to the lunatic asylum established either wholly or in part for the county, county of a city, or county of a town in which such person shall be in custody; and every such person so removed shall remain under confinement in every such asylum to which such person may be removed until it shall be duly certified to the said Lord Lieutenant or other chief governor

(a) See 8 & 9 Vict. c. 107, s. 10, *post*, p. 813.

or governors, by two physicians or surgeons or a surgeon and physician, that such person has become of sound mind; whereupon the said Lord Lieutenant or other chief governor or governors is hereby authorized, if such person shall remain subject to be continued in custody, to issue his or their warrant to the keeper or other person having the care of any such asylum, directing that such person be remitted to the prison or other place of confinement from which he or she shall have been taken, or, if the period of imprisonment or custody of such person shall have expired, or if such person shall not be under any sentence of imprisonment, that such person shall be discharged (a).

1 & 2 Vict. c. 27.

III. That if it shall be certified to the said Lord Lieutenant or other chief governor or governors, by two physicians or surgeons or a physician and surgeon, that any person committed to prison for trial for any offence is or has become insane, or is an idiot, it shall be lawful for such Lord Lieutenant or other chief governor or governors, if he or they shall think fit, by warrant under his or their hand or hands, to order that such person shall be removed to the lunatic asylum established wholly or in part for the county, county of a city, or county of a town in which such person shall be in custody, and detained in such asylum, unless in the meantime admitted to bail by some legal authority, until the assizes, sessions, or commission at which such person should be brought to trial or indicted according to the due course of law, and that such person shall then be remitted to the custody of the keeper or governor of the gaol, or other person in whose custody such person may have been under the terms of the original committal, in order to his or her being indicted and tried for such offence, or otherwise disposed of according to law: Provided always, that every such person, while so detained in such lunatic asylum, shall have the same liberty and privilege of seeing his or her friends and legal advisers, at all reasonable times, which he or she would have had in the gaol or other prison from which he or she may have been removed.

Lord Lieutenant may direct insane persons committed for trial to be removed to a lunatic asylum.

IV. That this act shall not extend to England or Scotland.

Act not to extend to England or Scotland.

(a) See 8 & 9 Vict. c. 107, s. 11, *post*, p. 813.

5 & 6 Vict. c. 123.

5 & 6 Victoria, c. 123.

An Act for amending, until the first day of August one thousand eight hundred and forty-five, and until the end of the then Session of Parliament (a), the law relating to private Lunatic Asylums in Ireland.
[12th August, 1842.]

7 Geo. 4, c. 74,
s. 55.

Inspectors general of prisons to be inspectors of lunatic asylums.

WHEREAS by an act passed in the seventh year of the reign of His Majesty King George the Fourth, intituled "An Act for consolidating and amending the Laws relating to Prisons in Ireland," it is provided that each of the inspectors general thereby directed to be appointed shall once at least in every year go round one of the circuits in the said act mentioned, and visit and inspect (amongst other places) every madhouse and place where lunatics or idiots are confined, whether the same be a public establishment, or kept for profit by any private individual in or within such circuit, and shall report upon the state thereof to the Lord Lieutenant or other chief governor or governors of Ireland: And whereas it is expedient to make further provision for the licensing, regulation, and inspection of private lunatic asylums in Ireland: It is therefore enacted, that the inspectors general of prisons in Ireland for the time being appointed under and by virtue of the said recited act shall respectively be inspectors of lunatic asylums in Ireland, for the purposes of the said recited act and of this act, but without any additional salary or emolument in respect of such office, save for travelling expenses as hereinafter provided: and every such inspector general is hereby required, so far as he lawfully can, to enforce the due execution of the said recited act and of this act, and to carry the provisions of the said recited act and of this act into effect.

Oath of inspectors general.

II. That each inspector general shall, before he acts in the execution of his duty under this act, take an oath to the following effect; (that is to say,)

'I, *A. B.* do swear, that I will discreetly, impartially, and faithfully execute all the trusts committed unto me by virtue of an act passed in the sixth year of the reign of her Majesty Queen Victoria, intituled [*insert title of this act*], and that I will keep secret all such matters as come to my knowledge in the execution of my office (except when required to divulge the same by legal authority), or so far as I shall feel myself called upon to do so for the better execution of the duty imposed upon me by this act. So help me God.'

Which oath it shall and may be lawful for the Lord Chancellor to administer to every such inspector general.

No person shall keep a house for

III. That from and after the commencement of this act it

(a) By 9 & 10 Vict. c. 79, the above act is continued until 31st July, 1847, or if Parliament be then sitting, until the end of the then session of Parliament.

shall not be lawful for any person to keep a house for the reception of two or more insane persons in Ireland unless the same shall have been first duly licensed in the manner directed by this act; and every person keeping a house for the reception of two or more insane persons, not duly licensed, shall be deemed, guilty of a misdemeanor: Provided always, that no one license shall authorize any person to keep more than one such house.

5 & 6 Vict. c. 123.

the reception of
insane persons
unless licensed.

IV. That the justices of the peace assembled in general or quarter sessions in Ireland shall have authority to grant licenses (if they shall think fit) in the manner directed by this act for persons to keep houses for the reception of two or more insane persons, of one or both sexes, as such justices shall think fit, within their respective counties.

Justices of peace
may grant
licenses.

V. That every such license shall be granted in manner following, and not otherwise; (that is to say,) every such license shall be granted by the justices in general or quarter sessions assembled for the county wherein the house sought to be licensed shall be situate, and shall be under the hands and seals of three or more of the said justices in general or quarter sessions assembled; and every person who shall apply or intend to apply to have a house licensed for the reception of insane persons shall give notice to the clerk of the peace for the county wherein such house shall be situate fourteen clear days at the least prior to the general or quarter sessions where he shall apply for such license, which notice shall contain the true Christian and surname and place of abode of the person so applying and intending to keep such house, and in case such person so applying shall not propose to reside himself in the licensed house, the Christian and surname and previous occupation of the superintendent who is to reside therein; and such notice shall state whether the license so applied for is for the reception of male or of female patients, or of both, and if for the reception of both, shall state the number of each sex proposed to be received, and shew the means by which the one sex may be kept distinct and apart from the other; and such notice shall be accompanied by a plan of such house, to be drawn upon a scale of not less than one-eighth of an inch to a foot, with a description of the situation thereof, and the length, breadth, and height of, and a reference by a figure or letter to every room and apartment therein, and a statement of the greatest number of patients proposed to be received into such house, which notice and plan shall be laid by such clerk of the peace before the justices at such time as they shall take into consideration the application for such license.

Licenses to be
granted in Court.

Notice of appli-
cation for license
to be given.

VI. That if there be any place or building detached from any house to be licensed, but belonging to or in anywise appertaining to such house, such place or building shall be considered part of such licensed house for all the purposes of this act; and that notice of any additions or alterations which shall from time to time be made to or in any house licensed under this act, shall

Detached build-
ings to be con-
sidered part of
the house; and
notice of altera-
tions to be
given.

5 & 6 Vict. c. 123.

Penalty for not giving notice, &c.

License to be made out by clerk of the peace according to schedule (A), and fees to be paid thereon.

When license granted, clerk of the peace to furnish inspectors with copy of the license, notice, and plan.

How money received for licenses to be disposed of.

be given by the person to whom the license shall have been granted to the clerk of the peace for the county wherein such house shall be situate, within one calendar month next after the completion thereof, accompanied with a plan of all the additions and alterations, to be drawn upon the scale aforesaid; and if any person whose duty it shall be so to do shall (wilfully, and with intention to deceive,) not give a full and complete plan of the whole of any house to be licensed, or notice of any and all such additions and alteration as shall have been made in any such licensed house, or if any person shall, in any such notice as aforesaid, wilfully make any false or erroneous statement, every person so offending shall be deemed guilty of a misdemeanor.

VII. That every such license shall be made out by the clerk of the peace of the county wherein the house to be licensed shall be situate, according to the form in schedule (A.) annexed to this act, for such time, not exceeding thirteen calendar months, as the justices shall think fit, and shall be signed by two or more such justices, and shall be duly stamped with a ten shilling stamp; and for every license granted to any person for keeping a house for the reception of insane persons there shall be paid to the clerk of the peace, exclusive of the sum to be paid for the stamp, the sum of ten shillings for every insane person proposed to be received into such house, but for no license to be so granted shall be paid less than five pounds, exclusive of the sum paid for the stamp; and such license shall not be delivered nor be of any avail until the sum so payable thereon shall have been paid.

VIII. That the clerk of the peace for every county shall, within four clear days after the granting of every such license in such county, transmit to the said Inspectors General, or one of them, a true copy of such license, and of the notice and plan given to him previous to the application for such license; and in default of so doing, and for every such offence, such clerk of the peace shall be subject and liable to a penalty not exceeding the sum of five pounds, nor less than forty shillings.

IX. That all monies to be received for such licenses shall be paid over, by the clerks of the peace by whom the same shall have been received respectively, to the said Inspectors General, at such time and in such manner as the commissioners of her Majesty's Treasury, or any three or more of them, shall direct, and from such monies shall be paid all the fees and expenses required to be disbursed in the execution of this act; and the said Inspectors General shall keep a true account of all such receipts and disbursements, which account shall be made up to the first day of January in each year, and shall specify the several heads of expenditure, and shall be signed by such Inspectors General, and laid before Parliament on or before the twenty-fifth day of March in every year, if Parliament shall be then sitting, or if Parliament shall not be then sitting, within one month after the then next sitting of Parliament, and the like account shall

be transmitted to the commissioners of her Majesty's Treasury, 5 & 6 Vict. c. 123. who shall thereupon, if they shall deem it necessary, direct the balance to be paid into the Exchequer to the account of the consolidated fund; and if at any time there shall be any balance due to the said Inspectors General on account of expenses or liabilities incurred in the execution of or incidental to this act, it shall be lawful for the commissioners of her Majesty's Treasury, or any three or more of them, and they are hereby empowered, from time to time, if they shall think fit, on the application of the said Inspectors General, to cause to be issued and paid, out of the consolidated fund, to such Inspectors General, such a sum of money as the said commissioners of her Majesty's Treasury shall think necessary to defray the expenses incurred under the provisions of or incidental to this act.

X. That it shall and may be lawful for the Commissioners of her Majesty's Treasury, or any three or more of them, from time to time to advance, by way of imprest, to the said Inspectors General, such sum or sums of money as to such Commissioners of her Majesty's Treasury may appear requisite and reasonable for carrying into effect the provisions of this act, such sum or sums to be accounted for by the said inspectors in their then next account. Treasury may advance money for the purposes of this act.

XI. Provided always, and be it enacted, That if any person to whom a license for keeping a house shall have been duly granted under this act shall die before the expiration of the said license, and the legal representatives of such deceased person shall, within ten days next after such death, give notice thereof to the clerk of the peace for the county wherein such house shall be situate, it shall be lawful for the justices of the peace at the next general or quarter sessions for such county, if they shall think fit, by an order in writing under the hands of any three of them, made in open Court, to confirm the said license, with all the conditions and liabilities annexed thereto, for the term unexpired, to such person as shall at the time of such death be the superintendent of such house, or have the care of the patients therein, or to such other person as such justices shall think fit; and in the meantime such previous license shall, notwithstanding the death of such person, remain in full force. On death of licensed person the license may be confirmed to other persons.

XII. That if any person duly licensed under this act shall by sickness or other sufficient reason become incapable of keeping such house, or if any such licensed house shall be pulled down, or occupied under the provisions of any act for public purposes, or shall by fire, tempest, or other unavoidable calamity be rendered unfit for the accommodation of insane persons, it shall and may be lawful for the justices of the peace assembled in general or quarter sessions for the county in which such house shall be situate, upon the payment of not less than one pound for each license, exclusive of the sum to be paid for the stamp, to grant a new license to such other person as they shall think fit: and Where any licensed person becomes incapable, or the house is rendered unfit, the justices may grant a new license to another person, and also for another house.

5 & 6 Vict. c. 123.

Notice of such changes.

Lord Lieutenant or Lord Chancellor may revoke licenses.

Previous notice to be given.

No person shall be received into or retained in a licensed house without an order and medical certificate.

also to grant to the person whose house has been so rendered unfit a license to keep such other house for the accommodation of insane persons within the same county as such justices shall think fit: Provided always, that the notice of such intended change of persons, and all plans and statements of and concerning such new house, shall be given as are required when application is made for a license for the first time: Provided also, that the cause of such change of house shall be duly specified in writing to the clerk of the peace within seven clear days after the happening thereof.

XIII. That if any of the said inspectors shall recommend in writing to the Lord Chancellor of Ireland for the time being, that any license granted under this act should be revoked, it shall be lawful for such Lord Chancellor, after making or causing to be made such inquiries as he shall think necessary, to revoke the same by an instrument in writing under his hand, such revocation to take effect at a period not exceeding three calendar months from the time notice thereof shall have been given in the *Dublin Gazette*; and a copy of every such instrument of revocation shall be transmitted to the person to whom such license shall have been granted, his executors or administrators, or to the superintendent of the house, in case the person to whom such license shall have been granted shall not reside in the licensed house, before any such publication shall take place: Provided always, that in every case of recommendation for revocation of any such license, notice in writing thereof shall be given to the person or persons complained of seven clear days previous to the transmission of such recommendation to the Lord Chancellor.

XIV. That no person shall be received into or detained, after the commencement of this act, in any house licensed for the reception of insane persons in Ireland, without an order under the hand of the person by whose direction such insane person shall have been sent, which order shall be according to the form in schedule (B.) annexed to this act; and in it shall be stated the Christian and surname and place of abode of, and the degree of relationship or other circumstance of connexion between such person and such insane person, and the true name, age, place of residence, former occupation, and the asylum or other place (if any) in which such insane person shall have been previously confined, and whether such person shall have been found lunatic or of unsound mind under a commission issued for that purpose by the Lord Chancellor; nor shall any such person be received into or detained in any such house without a medical certificate of two physicians, surgeons, or apothecaries in the manner directed by this act; and if any person shall knowingly and wilfully receive or detain any insane person or persons represented or alleged to be insane, or to be taken care of or confined in any house licensed under this act, without such order and

medical certificate, and without making, within three clear days after the reception or detainer of such patient, a minute or entry in writing, in a book to be kept for that purpose according to the form in schedule (C.) annexed to this act, of the true name of the patient, and also of the Christian and surname, occupation, and place of abode of the person by whom such patient shall be brought, every person so offending shall be deemed guilty of a misdemeanor. 5 & 6 Vict. c. 123.

XV. That every such medical certificate upon which any order shall be given for the confinement of any person in a house licensed under this act shall be according to the form in schedule (D.) annexed to this act, and shall be signed by two medical practitioners not being in partnership, and each of them being a physician, surgeon, or apothecary, who shall have separately visited and personally examined the patient to whom it relates not more than seven clear days previous to such confinement; and such certificate shall be signed and dated on the day on which he or she shall have been so examined, and shall state that such person is insane and proper to be confined; and every such certificate for the confinement of any person in a house licensed under this act shall, if the same be not signed by two medical practitioners, state the special circumstance which shall have prevented the patient being visited by two medical practitioners; and any patient may under such special circumstance be confined in any such licensed house upon the certificate of one medical practitioner, provided such certificate shall be further signed by some other medical practitioner within fourteen days next after the first signing thereof; and any person who shall, knowingly and with intention to deceive, sign any such medical certificate untruly setting forth any of the particulars required by this act, shall be deemed guilty of a misdemeanor: Provided always, that no physician, surgeon, or apothecary shall sign any certificate for the confinement of a patient in any such licensed house who is wholly or partly the proprietor or the regular professional attendant of such licensed house, nor shall any physician, surgeon, or apothecary sign any certificate for the confinement of a patient in any such house of which his father, son, brother, or partner is wholly or in part proprietor, or the regular professional attendant of such house, on pain of being deemed guilty of a misdemeanor.

Form, &c. of medical certificate to warrant reception of insane persons into licensed houses.

Certificate not to be signed by medical men interested by themselves or their relatives, &c., in such houses.

XVI. And in order that the inspectors may know when any patient becomes an inmate of any house licensed for the reception of insane persons, be it enacted, That the proprietor or resident superintendent of every house licensed under this act shall, within the space of two clear days next after the day on which any person shall have become an inmate of such house, transmit a copy of the order and medical certificates in that behalf, with a notice, according to the form in Schedule (E.) annexed to this act, to the said inspectors or one of them; and

Notice of reception of insane persons, and copies of orders and medical certificates, to be transmitted to inspectors of lunatic asylums, who shall keep a register.

5 & 6 Vict. c. 123. every proprietor or resident superintendent of any such house who shall knowingly and wilfully neglect so to do shall be deemed guilty of a misdemeanor; and the said inspectors are hereby required to preserve all such copies of orders and certificates, and also within five clear days to enter in a register to be provided for that purpose the Christian and surname of each insane person so returned to them, and of the persons by whose order and upon whose medical certificates every such insane person is confined, and the house in which every such insane person is confined, according to the form in Schedule (C.) annexed to this act.

Notice of escape, removal, or death of insane patients to be given to inspectors.

XVII. That whenever any patient confined in any house licensed for the reception of insane persons shall escape therefrom or be removed therefrom, or shall die, the proprietor or resident superintendent of such house shall, within two clear days next after such escape, removal, or death, transmit a written notice thereof to the said inspectors or one of them, according to the form in Schedule (F.) annexed to this act; and in every case of escape such notice shall state the circumstances connected with such escape, and the then state of mind of the patient; and in every case of removal such notice shall state by whom removed, and the then state of mind of such patient so removed, and to what place removed, if known; and if any such patient so escaping or removed shall be received or brought back to such house, such proprietor or resident superintendent shall, within two clear days next after such patient shall be received or brought back, transmit a like notice to the said inspectors or one of them; and all such notices shall be preserved and entered by the said inspectors in like manner as is required in the case of the notice of the admission of any patient into any such licensed house; and in every such case of death, escape, or removal, or return of any patient who shall have escaped or been removed, every proprietor or resident superintendent of any such house who shall knowingly and wilfully neglect to give such notice as in that behalf is required, shall be deemed guilty of a misdemeanor.

Licensed houses not kept by a physician, &c. to be visited by a medical man once a fortnight.

XVIII. That every house licensed under this act, in case such house shall not be kept by a physician, surgeon, or apothecary, shall be visited once in every fortnight by a physician, surgeon, or apothecary; and such resident attendant or visiting physician, surgeon or apothecary is hereby respectively required, once in every fortnight at least, to make and sign a statement of the health of each and every patient in such licensed house, and the condition of the house, according to the form in Schedule (G.) annexed to this act; and such statement shall be entered in a book to be kept at such house, and be regularly laid before the visiting inspectors for their inspection and signature.

Statement of health to be kept and shown to visitors.

Inspectors may alter the period.

XIX. Provided always, and be it enacted, That when any house not kept by a physician, surgeon, or apothecary shall be

licensed to receive less than eleven insane persons, then and in such case it shall be lawful for the said inspectors, if they shall so think fit, to direct and permit that such house shall be visited by the physician, surgeon, or apothecary once at least in four weeks, instead of once every fortnight: Provided always, that such permission shall be in writing under the hands of the said inspectors, according to the form in Schedule (H.) annexed to this act, and shall be subject to such alteration or revocation as the said inspectors shall think fit; and that such physician, surgeon, or apothecary shall enter in a book to be kept for that purpose the date of his visit, and the condition of the house, and state of health of each of the patients therein.

5 & 6 Vict. c. 123.

cal visits of
medical attend-
ants.

XX. That every such licensed house in Ireland shall be visited by one of such inspectors of lunatic asylums once at the least in every six months, on such days, and at such seasonable hours of the day, and for such length of time as he shall think fit.

Inspectors to
visit licensed
houses once in
every six
months.

XXI That the said inspector, when visiting every such licensed house, shall and is hereby required and authorized to inspect every part of the premises included in the license for the same, and to see every patient then confined therein, and to inquire whether any patient is under restraint, and why, and also to inspect the certificate of admission of every patient who shall have been admitted into such house since the last visitation of such house; and to enter in the book directed by this act to be kept for recording inspectors visits a minute of the then condition of the house so visited, and of the patients therein, and of the number of patients under restraint, with the reasons thereof as stated, and such irregularity (if any) as may exist in any of such certificates as aforesaid; and also to add any observations which he may deem proper as to any of the matters aforesaid; and also, if such visit be the first after the granting of a license to the house so visited, to examine such license, and if the same be in conformity with the provisions required by this act, to sign the same; but if it be informal, to enter in such visiting inspector's book in what respect such license is informal; and every such inspector shall also inquire whether any and at what times divine service is read and performed for the benefit and consolation of any of the patients, or what religious aid they receive under any circumstances of intellectual improvement, and what description of employment, amusement, or recreation (if any) is provided for them; and shall at the time of every such visitation state in the book directed by this act to be kept for recording inspectors visits the result of such inquiry, with such observations as he shall think useful or necessary; and in those houses where it shall appear that divine service is not performed, or that religious communication with any minister is not permitted, the proprietor or resident superintendent of every such house shall state in such book the reasons thereof.

Duties of inspec-
tors.

5 & 6 Vict. c. 123.

Plan of house to be hung up, and copy of act kept, and at each visitation inspector to make minutes.

Minutes to be transcribed in a book.

Concealment from inspectors to be considered a misdemeanor.

Patients book to be kept in every licensed house, and to be produced to visiting justices.

Penalty on omission to produce the books.

Inspectors to consider cases to which their attention may be drawn, and make entry in patients book.

XXII. That there shall be hung up in some conspicuous part of every licensed house a copy of the plan in that behalf delivered to the clerk of the peace ; and there shall also be kept in every such house a Queen's printer's copy of this act, bound up in a book, in which book the visiting inspector shall record his visit, and make minutes in writing of the condition of such house as to the care of the patients therein, and all such other particulars as he shall think deserving of his notice, together with his observations thereupon ; and a copy of every such minute so made by any inspector shall forthwith be transmitted by him to the clerk of the peace for the county.

XXIII. That every clerk of the peace shall, upon receipt of any such copy of minute, enter the same in a book to be kept by him for that purpose ; and every such entry of minute shall be laid before the justices of the peace assembled in general or quarter sessions for the county wherein the house to which such minute shall relate shall be situate, previously to the consideration of any renewal of the license to such house.

XXIV. That if the proprietor or resident superintendent of any licensed house shall fraudulently conceal or attempt to conceal any part of such house or premises, or any person detained therein as insane, from any such inspector, or from any medical or other person authorized under the provisions of this act to visit and inspect any such house and the patients confined therein, every person so offending shall be deemed guilty of a misdemeanor.

XXV. That in every house licensed for the reception of insane persons the proprietor or resident superintendent shall keep, in addition to the visiting inspector's book hereinbefore directed to be kept, a book to be called the "Patients Book," which book shall be produced to the visiting inspector at each visit, and he shall make an entry therein that the same has been so produced, and insert therein such observations as he may think fit respecting the state of mind of any patient in such house, and sign the same.

XXVI. That any proprietor or resident superintendent of any such house omitting at the visit of any such inspector to produce to him such visitor's book and patients book, shall forfeit and pay a penalty of twenty pounds, to be recovered as hereinafter provided.

XXVII. That the said inspectors respectively visiting any such licensed house shall carefully consider and give special attention to the state of mind of any patient therein confined as to the propriety of whose detention he shall have cause to doubt, or as to whose sanity his attention shall be specially called by the patient or any other person, and shall, if he shall think the propriety of the detention of such patient requires further consideration, make a minute thereof in the patients book of such house.

XXVIII. That any such inspector, in case he shall doubt the propriety of the detention of any patient in any such house, shall make a special visit to such patient, accompanied by the managing officer and the medical officer, or, if more than one, the principal medical officer of the nearest district lunatic asylum, on such day and at such hour as he shall think fit ; and if after two distinct and separate visits so made it shall appear to such inspector and managing officer and medical officer that such person is detained in such house without sufficient cause, they may give such orders as to them shall seem meet for the discharge of such person at such time as the circumstances of the case may seem to justify : Provided always, that the result of each of such special visits shall be entered in writing in the patients book of such house ; and such entry, and also the order for discharge, shall be signed by such inspector and managing officer and medical officer: Provided also, that each of such special visits must be by the same inspector and managing officer and medical officer.

5 & 6 Vict. c. 123.

Inspectors may make special visits, and after two such visits may, subject to certain restrictions, liberate a patient.

XXIX. Provided also, and be it enacted, that not less than fourteen days shall intervene between the first and second of such special visits, and that such inspector shall, previous to the second of such special visits, give notice thereof to the proprietor or resident superintendent of the house in which the patient intended to be visited is detained, and also (so far as is practicable) to the person by whose authority such patient was received into such house or is then detained therein, such notice to such several parties to be by letter, signed by such inspector, and with his name indorsed on the outside or cover thereof, and sent by post, and to be put into the post fourteen days at least before the day in such notice specified as the day for such second visit ; and the master of any post-office into which any such letter shall be put shall and is hereby required to give to such inspector a receipt for the same, in the form set out in the schedule hereto annexed, and which receipt shall be *primâ facie* evidence of such letter having been sent to the person to whom the same shall by such receipt appear to have been addressed.

Notice of special visits.

XXX. Provided also, and be it enacted, that the notice so required to be given to the proprietor or resident superintendent of the house may, instead of being given by letter as aforesaid, be given by notice in the patients book of such house, and signed by such inspector.

Mode of serving notice.

XXXI. Provided also, and be it enacted, that such power of liberation shall not extend to the case of any person who shall have been found idiot, lunatic, or of unsound mind under any commission issued for that purpose by the Lord Chancellor, nor to any insane person confined under any order or authority of the Lord Lieutenant, or of any criminal Court of justice ; but it shall be lawful for such inspectors respectively, if they shall

Provision as to certain insane persons.

5 & 6 Vict. c. 123. think fit, to examine into the state of mind or condition of any such person, and to report his or their opinion in writing on the state of mind or condition of such person to the Lord Chancellor or to the chief secretary of the Lord Lieutenant, as the case may be.

Inspectors may, upon information of mal-practices, visit licensed house at night.

XXXII. That it shall be lawful for either of the said inspectors, upon receiving information upon oath (which oath they or either of them are and is hereby empowered to administer) that the party making such oath hath cause to suspect and doth verily believe that any malpractice has taken place in any house licensed under this act, which malpractice cannot be ascertained by examination and inspection during the day, to visit and inspect any such house at such hour of the night as he shall think fit.

In case of inquiry inspectors may give information relative to any person confined.

XXXIII. That if any person shall apply to the said inspectors in order to be informed whether any particular person is confined as an insane person, and such inspectors shall think it reasonable that such inquiry should be made, they shall examine the register hereinbefore directed to be kept; and if it shall appear thereby that the person so inquired after is or has within the last twelve calendar months been confined in any of such houses, such inspectors shall deliver to the person so applying, in writing, the name of the proprietor or resident superintendent in whose house the person so inquired after is or has been confined, and the situation of such house, and (if such inspectors shall so think fit) a copy of the order and medical certificates upon which such person was received into such house.

Particulars of inquiry to be made by inspectors.

XXXIV. That with a view to the amelioration of the condition of insane persons, each such inspector shall, when under the provisions of this act visiting houses licensed for the reception of insane persons, and when under the provisions of the hereinbefore recited act visiting any other madhouses, or places where lunatics and idiots are confined, inquire whether there has been adopted therein, either in whole or in part, any system of non-coercion, and if so, the particulars of such system, and by what means practised, and whether by medical treatment or otherwise, and what has been the result thereof; and shall, in like manner inquire into the classification or non-classification of patients in every such house, asylum, or place, and the number of attendants on each class, and, so far as is practicable, the proportionate number of attendants before and since the adoption of the system of non-coercion, if such system shall have been adopted: and shall also, in like manner, inquire into the occupations and amusements of the patients in every such house, asylum, or place, and whether the same be in-door or out-door occupations or amusements, and the effect of such occupations and amusements, both in-door and out-door respectively, on the condition, as well mental as bodily, of the patients; and shall

also in like manner inquire into the condition, as well mental as bodily, of the pauper patients (if any) when first received into every such house, asylum, or place, and whether the condition has been such as to prevent or impede the ultimate recovery, either mental or bodily, of such patients; and also as to the dietary of the pauper patients (if any) in every such house, asylum, or place, and shall also make such other inquiries as to such inspectors respectively shall seem meet. 5 & 6 Vict. c. 123.

XXXV. That the said inspectors shall, in the month of September in every year, make a report of the state and condition of the several houses licensed under this act, and also as to the care of the patients therein, and the several particulars hereinbefore mentioned, such other particulars as they shall think deserving of notice, to the Lord Lieutenant and the Lord Chancellor for the time being respectively (*a*). Annual report to be made by inspectors to the Lord Lieutenant and Lord Chancellor.

XXXVI. That no person (except he be a guardian or relative, who does not derive any profit from the charge, or a committee appointed by the Lord Chancellor, or a person with whom such insane person shall be placed by such committee) shall, under pain of being deemed guilty of misdemeanor, receive to board or lodge in any house not licensed under this act, or to take the care or charge of any insane person, without first having the like order and medical certificates as are required on the admission of an insane person into a licensed house. Insane persons not to be received into unlicensed houses without an order and medical certificates.

XXXVII. That every person (except as aforesaid) who shall receive to board or lodge in any house not licensed under this act, or take the care or charge of any insane male or female person, shall within three calendar months next after, if such insane person or persons respectively shall not previously have returned to their own or usual place of abode, transmit to the said inspectors, or one of them, a copy of such order and medical certificates sealed and indorsed "Private Return," and not to be inspected by any person except the Lord Chancellor and the chief secretary of the Lord Lieutenant, and such other person or persons as shall be authorized in that behalf by them or any of them; and, every such person (except as aforesaid) shall also (if such insane male or female person shall not have been previously removed), on the first day of January in every succeeding year, or within seven clear days after, transmit to the said inspectors, or one of them, a certificate signed by two physicians, surgeons, or apothecaries, describing the then actual state of mind of such insane person, and to be indorsed "Private Return" and all such orders, medical certificates, and returns shall be preserved by the said inspectors, and shall be open only to the Copy of order and medical certificate and annual certificates to be transmitted from unlicensed houses to inspector.

(*a*) See report of the Inspectors General on the District, Local, and Private Lunatic Asylums in Ireland, 1844, with Appendices. The Appendix, No. 4, contains the general rules for the government of all the district lunatic asylums in Ireland, made, framed, and established by the Lord Lieutenant and council of Ireland, March 27, 1843.

5 & 6 Vict. c. 123. inspection of Lord Chancellor and the chief secretary of the Lord Lieutenant and such other person or persons as shall be authorized in that behalf by them or any of them; and every person (except as aforesaid) who shall receive to board or lodge in any house not licensed under this act, or take the care or charge of any insane person in any such house, and who shall omit to transmit such copies of orders and certificates, shall be deemed guilty of a misdemeanor.

Lord Chancellor may direct special visitation of patients in confinement.

XXXVIII. Provided always, and be it enacted, that it shall be lawful for the Lord Chancellor for the time being, if he shall think fit, at any time or times, by an order in writing by him directed to the said inspectors or either of them, to require them or either of them to visit and examine any person confined as an insane person who shall be confined in the care of any guardian or relative, or of any other person, or in any house or building in which any person or persons alleged to be insane shall be confined, and to make a report to the Lord Chancellor of such matters in relation to the premises or any of them as he or they shall be directed to inquire into.

Inspectors may call in a physician, &c., when visiting any house.

XXXIX. That it shall be lawful for the said inspectors respectively visiting any house pursuant to the provisions of this act, and they are hereby respectively authorized, if they shall so think fit, to select and call in any physician, surgeon, or apothecary, residing within a reasonable distance of such house to visit the same with them respectively; and every such physician, surgeon, or apothecary shall be entitled to a fee, not exceeding two guineas for every such attendance, to be paid by the inspectors or inspector by whom such attendance shall have been required; and such inspectors shall have credit in their account of receipts and disbursements under this act for every such fee so paid: Provided always, that no physician, surgeon, or apothecary shall be so called in to visit any house who shall be, directly or indirectly, interested in such house; and it shall also be lawful for the inspectors respectively visiting as aforesaid any house to require the attendance of the managing officer and the medical officer, or (if more than one) the principal medical officer, of the nearest district lunatic asylum, to visit the same with them respectively; and the travelling expenses of every such managing officer and medical officer shall be paid by the inspector by whom his attendance shall have been required, and the said inspectors shall have credit for the same in their said account.

and also the managing and medical officers of the nearest district asylum.

Lord Chancellor may assign counsel to assist at any investigation.

XL. That in case it shall appear to the Lord Chancellor that the assistance of counsel is requisite for the conducting of any visitation or investigation to be holden under this act, it shall be lawful for such Lord Chancellor to nominate and appoint any barrister-at-law of not less than six years standing for the purpose of assisting at such visitation or investigation, with such reasonable fees or payment and allowances for his trouble and

for his travelling and other expenses as the Lord Chancellor by order under his hand shall direct; and all such fees and allowances for any such barrister shall be paid by the said inspectors upon the order in writing in that behalf of the said Lord Chancellor, and such inspectors shall have credit for the same in their said account. 5 & 6 Vict. c. 123.

XLI. That every such inspector shall, over and above his salary, be paid his travelling and other expenses incurred under the provisions of this act; and every such inspector shall, on or before the first day of January in every year, lay or cause to be laid before the commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being an account of the travelling and other expenses incurred by him as aforesaid in the previous year; and the said commissioners of her Majesty's Treasury, or any three or more of them, are hereby empowered from time to time to cause to be issued and paid out of the consolidated fund to each such inspector such sum as they shall think fit for such travelling and other expenses so incurred by him. Expenses of inspectors how to be paid.

XLII. That in every case in which any patient shall die or have been discharged as cured, the order, medical certificates, and notices in that behalf required under this act may be delivered up to the Lord Chancellor to be cancelled, and thereupon the name of such person may be wholly erased from the register thereof: Provided always, that no such erasure of the name of any person shall be made until after the expiration of twelve calendar months after the death or discharge of such person. After death or discharge of patient the orders, &c. in that behalf may be delivered up to be cancelled.

XLIII. And for the better enabling the said inspectors to inquire into the several matters and things by this act referred to them, be it enacted, that it shall be lawful for the said inspectors or either of them, from time to time, as they respectively shall see occasion, to require by summons, according to the form in schedule (I.) annexed to this act, any person to appear before them or either of them to testify the truth touching any matters relating to the execution of the powers given by this act, on oath or affirmation, which oath or affirmation either of the said inspectors is hereby empowered to administer. Inspectors may summon witnesses.

XLIV. That if any person, upon any examination under the authority of this act, shall wilfully give false evidence, he shall, on being convicted thereof, suffer the pains and penalties of perjury; and if any person shall refuse or wilfully neglect to attend in obedience to any such summons, or to give evidence, when duly summoned, every person so offending shall be deemed guilty of a misdemeanor. Penalties for giving false evidence, &c.

XLV. That the delivery of any summons authorized to be issued by any inspector under this act to any party to whom such summons shall be directed, or at his place of abode, to his wife, or to any child or servant of such party, being of the age of Service of summons.

5 & 6 Vict. c. 123. sixteen years or upwards, shall in all cases be deemed good and sufficient service of such summons.

Penalties recoverable by civil bill.

XLVI. That every pecuniary penalty imposed under or by virtue of this act may be recovered by civil bill by any person who shall sue for the same.

Proceedings of proprietors, &c. to be justified in course of common law.

XLVII. And whereas it is not intended by this act to give the proprietors or resident superintendent of any licensed house, or any other person concerned in confining any of her Majesty's subjects, any new justification from their being able to prove that the person so confined was sent there by such order and upon such medical certificates as are required by this act; be it therefore enacted, that in all proceedings which shall be had under her Majesty's writ of habeas corpus, and in all indictments, informations, and actions and other proceedings that shall be preferred, prosecuted, taken, or brought against any person for confining or ill-treating any of her Majesty's subjects insane, or represented or alleged to be insane, the respective parties complained of shall be obliged to justify their conduct according to the course of the common law, in the same manner as if this act had not been made.

Limitation of actions.

XLVIII. That if any action or suit shall be commenced or brought against any person for any thing done in pursuance of this act, the same shall be commenced within six calendar months next after the fact being committed, and shall be laid or brought in the county where the cause of action shall have arisen, and not elsewhere; and the defendant in every such action or suit shall and may, at his election, plead specially, or the general issue not guilty, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to be so done, or that such action or suit shall be brought in any other county, or shall not have been commenced within the time before limited for bringing the same, that then the jury shall find a verdict for the defendant; and upon a verdict being so found, or if the plaintiff shall be nonsuited, or discontinue his action or suit after the defendant shall have appeared, or if upon demurrer judgment shall be given against the plaintiff, then the defendant shall recover treble costs, and have such remedy for recovering the same as any defendant may have for his costs in any other case by law.

Act not to extend to public institutions.

XLIX. Provided always, and be it enacted, that nothing in this act contained shall extend to any public hospital or charitable institution supported wholly or in part by voluntary contributions, and not kept for profit by any private individual, or to any institution supported wholly or in part by grand jury presentment or Parliamentary grant of public money, excepting so far as relates to visitations appointed by the Lord Chancellor, and excepting so far as relates to the inquiries directed to be

made by the said inspectors when visiting such institutions 5 & 6 Vict. c. 123.
under the provisions of the herein-before first-recited act: Pro-
vided also, that no person shall be received into or detained in
any such institution, except as a pauper patient, to be main-
tained gratuitously therein, without such order and medical
certificate as herein-before required in the case of persons
admitted into or detained in houses licensed under this act;
and the manager, superintendent, or principal officer having the
charge of any such institution, who shall receive or detain
therein any person, not being such pauper patient as aforesaid,
without such order and certificate as aforesaid, shall be deemed
guilty of a misdemeanor.

L. That every county of a city and county of a town in Counties of
cities, &c. to be
deemed part of
counties at large.
Ireland, and every part thereof, shall for the purposes of this
act, but not for any other purpose, or otherwise, be deemed to
be situate in and part of the county at large within the bound-
aries of which the same or the greater part thereof shall be
comprised.

LI. That this act shall commence and take effect in the Commencement
and continuance
of act.
county of the city of Dublin and in the county of Dublin from
and after the commencement of the general quarter sessions
of the peace which shall be held next after the expiration of two
months, computed from the passing of this act; and that this
act shall commence and take effect in any other county and
county of a city or county of a town from and after the general
quarter sessions of the peace which shall be held at the several
assize towns respectively next after the expiration of the like
period, computed as aforesaid: and that this act shall be and
remain in force until the first day of August one thousand eight
hundred and forty-five, and until the end of the then next
session of Parliament, and no longer.

LII. That the words and expressions herein-after mentioned, Interpretation of
act.
which in their ordinary use have a more confined or different
meaning, shall in the construction of this act, except where the
context excludes such construction, be interpreted as follows;
(that is to say),

Every word importing the singular number or the masculine
gender only shall be understood to include and shall be
applied to several persons, matters, or things, as well as
one person, matter, or thing, and females as well as males
respectively; the words "Lord Lieutenant" shall be con-
strued to mean the Lord Lieutenant, lords justices, or
other chief governor or governors of Ireland; the words
"Lord Chancellor" shall be construed to mean the Lord
Chancellor, or lord keeper, or lords commissioners for the
custody of the great seal, in Ireland.

SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A.)

FORM OF LICENSE.

Know all men, that we, the undersigned justices of the peace, acting in and for the county of _____ in general [*or quarter*] sessions assembled, do hereby certify, That *A. B.* of the parish of _____ in the county of _____ hath delivered a notice to and deposited with the clerk of the peace for the said county of _____ a plan and description of a house and premises proposed to be licensed for the reception of insane persons; and we, having considered and approved the same, do hereby authorize and empower the said *A. B.* [*or C. D.*, as superintendent, the said *A. B.* not intending to reside therein himself,] to use and employ the house and buildings situate at _____ in the parish of _____ in the county of _____ as a house for the reception of _____ insane persons [*male and female, or male or female only*]. And this license shall continue in force for the space of _____ calendar months, and no longer.

Given under our hands, this _____ day of _____ in the year of our Lord

Witness

(L. S.)

(L. S.)

(L. S.)

Clerk of the peace.

Note.—Fourteen days notice of the intention to renew this license must be given to the clerk of the peace.

SCHEDULE (B.)

STATEMENT and ORDER to be annexed to the medical certificates authorizing the reception of an insane person.

The patient's true Christian and surname at full length.

The patient's age.

Married or single.

The patient's previous occupation (if any).

The patient's previous place of abode.

The licensed house or other place (if any) in which the patient was before confined.

Whether found lunatic by inquisition, and date of commission.

Special circumstance which shall prevent the patient being separately examined by two medical practitioners.

Special circumstance which exist to prevent the insertion of any of the above particulars.

Sir,

Upon the authority of the above statement, and the annexed medical certificates, I request you will receive the said as a patient into your house.

I am, sir,

Your obedient servant,

Name.

Occupation (if any).

Place of abode.

Degree of relationship (if any) to the insane person.

To Mr.

Proprietor of

SCHEDULE (C.)

FORM of BOOK of ENTRY of PATIENTS to be kept in the licensed Houses, and of Register to be kept by the Inspectors.

Surname and Christian Names, Sex, and Age of Patient, and whether married or single.	Occupation or Profession.	Place of Residence.	Date of Admission of Patient, and by whose Authority sent.	Date of Medical Certificates, and by whom signed.	Whether found lunatic by In- quisition.	When discharged.	Cured, not cured, or incurable.	Death.

I, the undersigned, hereby certify, That I separately visited and personally examined the person named in the annexed statement and order, on the day of One thousand eight hundred and and that the said is of unsound mind, and a proper person to be confined.

(Signed) Name.
Physician, surgeon, *or* apothecary.
Place of abode.

I, the undersigned, hereby certify, That I personally visited and personally examined the person named in the annexed statement and order, on the day of One thousand eight hundred and and that the said is of unsound mind, and a proper person to be confined.

(Signed) Name.
Physician, surgeon, *or* apothecary.
Place of abode.

SCHEDULE (E.)

Sir,
I am to acquaint you, That _____ was received into
my house on the _____ day of _____ and I herewith
transmit a copy of the order and medical certificates.

(Signed)

To the Inspectors of
Lunatic Asylums in Ireland.

Dated this day of One thousand eight
hundred and

	Names of probably curable Men.
	Names of probably curable Women.
	Number of probably curable Men.
	Number of probably incurable Men.
	Number of probably curable Women.
	Number of probably incurable Women.
	Number of Men under Restraint.
	Number of Women under Restraint.
	General Remarks on the State of Health of the Patients and Condition of the House.

Whereas by an act made in the _____ year of the reign of _____ intituled “An Act for Amending the Law relating to Private Lunatic Asylums in Ireland,” it is amongst other things provided and enacted, that when any house is licensed for the reception of insane persons, then it shall be lawful for the inspectors therein mentioned, if they shall so think fit, to direct and permit that such house shall be visited by the physician, surgeon, or apothecary once at least in every four weeks, instead of once in every week, as required by the said act: And whereas on the _____ day of _____ the assistant barrister for the county of _____ duly granted a license for the space of _____ calendar months to _____ for a house situate at _____ in the county of _____ for the reception of _____ insane persons: And whereas the said _____ hath applied to the said inspectors, that they will be pleased to direct and permit the said house to be visited once in every four weeks, instead of once in every week: Now know ye, That we the undersigned inspectors of lunatic asylums in Ireland, having thought fit to accede to the above request, do by this instrument in writing under our hands direct and permit that the house so licensed to the said _____ as aforesaid shall be visited by a physician, surgeon, or apothecary once at the least in every four weeks, instead of once in every week, as required by the said act: Provided always, and it is hereby expressly declared, that this permission shall be subject to such revocation or alteration as the inspectors of lunatic asylums in Ireland shall think fit. Witness our hands, this _____ day of _____ One thousand eight hundred and _____

Witness, _____ .

SCHEDULE (I.)

FORM OF SUMMONS.

We, whose names are hereunto set and seals affixed, being inspectors, *or* an inspector, appointed under an act passed in the year of the reign of intituled "An Act for Amending the Law relating to Private Lunatic Asylums in Ireland," do hereby require you personally to appear before us, *or* me, at in the parish of in the county of on next the day of at the hour of in the noon of the same day, then and there to be examined, and testify the truth touching certain matters relating to the execution of the said act.

Given under our hands this in the year
of our Lord
To

8 & 9 Victoria, c. 107.

An Act for the Establishment of a Central Asylum for Insane Persons charged with Offences in Ireland; and to amend the Act relating to the Prevention of Offences by Insane Persons, and the Acts respecting Asylums for the Insane Poor, in Ireland; and for appropriating the Lunatic Asylum in the City of Cork to the purposes of a District Lunatic Asylum.

8 & 9 Vict. c. 107.

[8th August, 1845.]

WHEREAS it is expedient that one central asylum in or near the city of Dublin should be provided for the custody and care of criminal lunatics: it is enacted, That the commissioners of public works in Ireland for the time being shall be trustees for the purpose of purchasing or providing, as herein-after mentioned, any buildings, lands, tenements, or hereditaments that may be necessary for the said central asylum, and the scite thereof, and the premises to be occupied therewith, and for erecting thereon suitable buildings, and for repairing, enlarging, improving upholding, and furnishing the same from time to time.

Commissioners of public works to be trustees for providing buildings and lands necessary for the establishment of a central asylum for criminal lunatics.

II. That for the purposes of this act the said commissioners of public works in Ireland for the time being, and their successors, shall be a corporation, by the name or style of "The Com-

Commissioners of public works to be a corporation for the purposes of this act.

8 & 9 Vict. c. 107. commissioners of Public Works in Ireland," and by that name, for the purposes of this act, shall have perpetual succession and a common seal, to be by them made and from time to time altered as they shall think fit, and shall and may sue and be sued, plead or be impleaded, in all Courts, and before all justices and others, and in that capacity shall be deemed promoters of the undertaking authorized to be executed by this act.

Power to commissioners of public works to purchase or rent buildings, lands, &c. which may be required for such central asylum.

III. That in order to enable the said commissioners of public works in Ireland to purchase and provide the buildings, lands, tenements, and hereditaments which may be required for the said central asylum and the scite thereof, it shall be lawful for the said commissioners, with the approval of the commissioners of her Majesty's Treasury, to contract and agree with any person or persons, or body or bodies corporate, for the purchase or renting of any buildings, lands, tenements, or hereditaments required for such central asylum, or the scite thereof, and the premises to be occupied therewith, and also for the purchase of any subsisting leases, terms, estates, or interests therein or charges thereon; and the buildings, lands, tenements, or hereditaments so contracted and agreed for shall be conveyed, assigned, or demised to or in trust for her Majesty, her heirs and successors, in such manner and form as the said commissioners of her Majesty's Treasury shall direct.

Consolidation of this act with lands clauses consolidation act.

IV. That in order to enable the said commissioners of public works to purchase and provide the said buildings, lands, tenements, and hereditaments, the "Lands Clauses Consolidation Act, 1845," shall be incorporated with this act, except the clauses with respect to the purchase and taking of lands otherwise than by agreement (a): Provided always, that all things by the said act required or authorized to be done by the promoters of the undertaking may be done by any two of the commissioners of public works in Ireland, subject to the approval of the commissioners of her Majesty's Treasury, in the cases provided by this act.

Commissioners of public works to obtain surveys, plans, and specifications, and submit same to the treasury.

V. That it shall be lawful for the said commissioners of public works, if they shall be so directed by the commissioners of her Majesty's Treasury, to employ any competent surveyor or architect to make a survey and estimate of the said proposed work, and to prepare such plan, section, or specification thereof as may be necessary, and send the same to the commissioners of her Majesty's Treasury, for their approval; and if the said commissioners of her Majesty's Treasury shall think fit to authorize the work in any such plan, section, or specification, or any modification thereof which they may think proper, to be undertaken, they shall, by warrant under their hands, direct the said commissioners of public works to execute such work, at and for an

(a) 8 & 9 Vict. c. 18. The clauses above excepted are sections 16—68; see Shelford on Law of Railways, pp. 199—209, 265—321, second edition.

amount not exceeding a sum to be specified in such warrant ; and the said commissioners of public works shall upon receipt of such warrant forthwith cause the construction of the work mentioned therein to be proceeded with. 8 & 9 Vict. c. 107.

VI. That the said commissioners of public works shall cause accounts in writing of the several sums received by them as such commissioners for the purposes of this act, and the sums expended by them for such purposes, and the mode of such expenditure, to be made up to the thirty-first day of December in each year, or to such period as the commissioners of her Majesty's Treasury shall direct ; and the said commissioners shall, as often as they shall be required so to do by the commissioners of her Majesty's Treasury, transmit to the said commissioners of the Treasury the said accounts ; and it shall be lawful for the said commissioners of her Majesty's Treasury to give such directions as they shall think proper, defining the duties of the said commissioners of public works in the execution of this act ; and the said commissioners of public works shall observe all such directions as aforesaid which shall from time to time be signified to them by the said commissioners of her Majesty's Treasury.

VII. That the several enactments contained in an act passed in the session of Parliament holden in the first and second years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Extension and Promotion of Public Works in Ireland," which affect or relate to any action or suit to be commenced against the commissioners for the execution of the last-recited act, or their secretary, or any person or persons, for any thing done by virtue of or in pursuance of the last-recited act, or in any proceedings in any such action or suit, or any limitation of time for the commencement thereof, or any costs thereof, or any evidence to be given therein, or any notice of action or suit, or satisfaction, or tender thereof, or any action or suit to be commenced by the said commissioners, or any proceedings therein, or the said commissioners suing or being sued in the name of their secretary, or any abatement or discontinuance of any such action or suit, or to the Court in which, or to the terms or conditions on which, any such action or suit shall be brought against the said commissioners, collectively or individually, or their secretary, shall be held to apply to and extend to any action or suit to be commenced against the commissioners of public works in Ireland, or their secretary, or any person or persons, for any thing done by virtue of or in pursuance of this act, or to any proceedings in any such action or suit, or to the limitation of time for the commencing thereof, or to any costs thereof, or to any notice of any such action or suit, or to any evidence to be given therein, or to any action or suit to be commenced by the said commissioners of public works in the execution of this act, or on account of or in pursuance of

Commissioners of public works to lay accounts before the commissioners of the Treasury.

Proceedings in actions by and against the commissioners of public works. 1 & 2 Wm. 4, c. 33.

8 & 9 Vict. c. 107.

When central asylum established, the Lord Lieutenant empowered to order the removal of criminal lunatics to such asylum.

1 & 2 Geo. 4, c. 33.

Lord Lieutenant to appoint the officers and servants of central asylum, and Lord Lieutenant and council to make rules and regulations for the government thereof.

this act, or to any proceedings in any such action or suit, or to the said commissioners suing or being sued in the name of their secretary for the time being, or to any abatement or discontinuance of any such action or suit, or to the Court in which, or to the terms or conditions on which, any such action or suit shall be brought against the said commissioners of public works, collectively or individually, or against their secretary.

VIII. And whereas by an act passed in the session of Parliament holden in the first and second years of the reign of his late Majesty King George the Fourth, intituled "An Act to make more effectual Provision for the Establishment of Asylums for the Lunatic Poor, and for the Custody of Insane Persons charged with Offences, in Ireland," it is amongst other things enacted, that it should be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being to give such order for the safe custody and care of criminals found insane as in the said act mentioned, during the pleasure of the Lord Lieutenant or other chief governor or governors of Ireland for the time being, in such place and in such manner as should seem fit; and it is by said act further provided and enacted, that whenever and as soon as there should be a lunatic asylum built or maintained, either wholly or in part, in any county, county of a city or county of a town, wherein such prisoner as therein mentioned should be tried or found insane as therein mentioned, then and from thenceforth such insane person should without delay be removed to such asylum as therein mentioned, and should be kept therein so long as such prisoner should be detained in custody; be it enacted, that whenever and as soon as the said central asylum shall be erected, and fit for the reception of criminal lunatics, it shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland to order and direct that all criminal lunatics then in custody in any lunatic asylum or gaol, or who shall thereafter be in custody, shall be removed without delay to such central asylum, and shall be kept therein so long as such criminal lunatics respectively shall be detained in custody.

IX. That it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being to nominate and appoint such persons as he or they shall think fit and proper to be governor, physician, surgeon, apothecary, matron, keepers, officers, and servants of said central asylum, and also that it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of her Majesty's Privy Council in Ireland, from time to time to make, frame, and establish any rules and regulations which may be necessary or proper for the good conduct and management of the said central asylum, and from time to time to revoke, alter, or make new such rules and regulations.

Insane Criminals.

8 & 9 Vict. c. 107.

X. And whereas by an act passed in the first year of the reign of her present Majesty, intituled "An Act to make more effectual Provision for the Prevention of Offences by Insane Persons in Ireland," it is amongst other things enacted, that if any person should be discovered and apprehended in Ireland under circumstances denoting a derangement of mind, and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, it should be lawful for any two justices of the peace of the county, county of a city, county of a town, city or town, and liberties, before whom such person might be brought, to call to their assistance any legally qualified physician, surgeon, or apothecary; and if upon view and examination of the said person so apprehended, or from other proof, the said justices should be satisfied that such person was a dangerous lunatic or a dangerous idiot, it should be lawful for the said justices, by warrant under their hands and seals, to commit such person to the gaol of such county, county of a town, city or town, and liberties, there to be kept in strict custody until or unless such person should be discharged in manner by the said act provided; be it enacted, that it shall not be lawful for the said justices to commit such person to gaol unless information on the oath of one or more creditable witness or witnesses shall have been made before the said justices, stating facts from which it shall appear that such person was discovered and apprehended under circumstances denoting a derangement of mind, and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, and that such person is a dangerous lunatic or a dangerous idiot: and such justices shall, if they shall so think fit, bind the person or persons swearing such information to appear at the next commission or assizes, or general or quarter sessions of the peace, whichever may first occur, which information shall be returned to the clerk of crown or peace; and the judges presiding at such commission, or the judge of assize, or assistant barrister or recorder, as the case may be, shall, if they shall consider it necessary so to do, examine into the case, and report to the Lord Lieutenant or other chief governor or governors of Ireland for the time being whether such person appears to him or them to be a dangerous lunatic or dangerous idiot.

Persons not to be committed as dangerous lunatics, unless upon information upon oath.
1 Vict. c. 27.

XI. And whereas by the said act it is also amongst other things enacted, that it should be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being, if he or they should so think fit, to direct, by warrant under his or their hand or hands, that any person who might be detained in custody in any gaol by virtue of any such warrant as aforesaid should be removed to the lunatic asylum established either wholly or in part for the county, county of a city, or

Lord Lieutenant may discharge a person committed as a dangerous lunatic who is duly certified to him to have become of sound mind, or to have ceased to be a dangerous

8 & 9 Vict. c. 107.

lunatic.

1 Vict. c. 27.

county of a town in which such person should be in custody ; and every such person so removed should remain under confinement in every asylum to which such person might be removed until it should be duly certified to the said Lord Lieutenant or other chief governor or governors, by two physicians or surgeons, or a surgeon and physician, that such person had become of sound mind, whereupon the said Lord Lieutenant or other chief governor or governors was thereby authorized to issue his or their warrant to the keeper or other person having the care of any such asylum, directing that such person should be discharged ; be it enacted, That whenever it shall be duly certified to the said Lord Lieutenant or other chief governor or governors, in manner aforesaid, that any such person has become of sound mind, or has ceased to be or is not a dangerous lunatic or a dangerous idiot, it shall and may be lawful for the said Lord Lieutenant or other chief governor or governors and he and they is and are hereby authorized to issue his or their warrant to the keeper or other person having the care of any such asylum, directing that such person shall be discharged.

Lord Lieutenant may direct persons under sentence of imprisonment or transportation, who become insane, to be removed to central asylum.
1 Vict. c. 27.

XII. That whenever and as soon as the said central asylum shall be erected and fit for the reception of lunatics it shall be lawful for the said Lord Lieutenant or other chief governor or governors, if he or they shall so think fit, to direct, by warrant under his or their hand or hands, that any person who may be under any sentence of imprisonment or transportation in any gaol or place of confinement, or in any district asylum, and in respect of whom it shall be certified by two physicians or surgeons, or a surgeon and physician, that such person is or has become insane, shall be removed to the said central asylum ; and every such person so removed shall remain under confinement in said asylum so long as such person shall remain subject to be continued in custody, or until it shall be duly certified to the said Lord Lieutenant or other chief governor or governors, by two physicians or surgeons, or a surgeon and physician, that such person has become of sound mind, whereupon the said Lord Lieutenant or other chief governor or governors is hereby authorized, if such person shall remain subject to be continued in custody, to issue his or their warrant to the keeper or other person having the care of any such asylum, directing that such person shall be remitted to the prison or other place of confinement from which he or she shall have been taken, or, if such person shall be entitled to his or her discharge, to direct the discharge accordingly.

The district lunatic asylums may receive as many patients as they can accommodate, the care and maintenance of whom shall be provided

XIII. And whereas by the said act passed in the session of Parliament holden in the first and second years of the reign of his late Majesty King George the Fourth it is amongst other things enacted, that at any time after the passing of the said act it should and might be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the

advice and consent of his Majesty's Privy Council in Ireland, to direct and order that any number of asylums for the lunatic poor in Ireland should be erected and established in and for such districts in Ireland as to the said Lord Lieutenant or other chief governor or governors and privy council should seem expedient; and that every such district should and might consist either of the whole of two or more counties, or of one or more county or counties and one or more county or counties of cities or towns, or of one county or county of a city or county of a town only, and no more, but should not in any case include part only of any county, county of a city or town; and that all lunatic poor within every such district respectively should be maintained and taken care of in the asylum belonging to such district; and that every such asylum established or to be established for any district consisting of more than one county, or one county of a city or county of a town, should be sufficient to contain such number of lunatic poor, not being less than one hundred nor more than one hundred and fifty in any one asylum, as should seem expedient to such Lord Lieutenant or other chief governor or governors and privy council; and that where any such district should consist of only one county or county of a city or county of a town, and no more, every such asylum should be sufficient to contain such number of lunatic poor, not being less than fifty, as should seem expedient to such Lord Lieutenant or other chief governor or governors and privy council: And whereas the said act was amended by an act passed in the seventh year of the reign of his said late Majesty, intituled "An Act for the further Amendment of an Act of the First and Second Years of His present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland:" And whereas several such asylums have been erected and established, and the said asylums are capable of affording accommodation for a larger number of lunatic poor than the number limited by the said two last-recited acts as the number which it is lawful under the provisions of such acts to maintain and take care of within any one lunatic asylum: And whereas by an act passed in the first year of the reign of his late Majesty King William the Fourth, intituled "An Act to amend an Act passed in the Eleventh Year of the Reign of His late Majesty King George the Fourth, intituled 'An Act for appropriating the Richmond Lunatic Asylum in Dublin for the Purposes of a District Lunatic Asylum,'" the said Richmond Lunatic Asylum was empowered to receive, maintain, and take care of within the said asylum any number of lunatic poor for the reception and accommodation of whom the said asylum should or might afford space or capacity: And whereas it is expedient to remove the limitation as to the number of lunatic poor which other district lunatic asylums now erected and established, or hereafter to be erected and established, may respectively receive,

8 & 9 Vict. c. 107.

for as heretofore.
1 & 2 Geo. 4,
c. 33.

7 Geo. 4, c. 11.

1 Wm. 4, c. 13.

8 & 9 Vict. c. 107.

maintain, and take care of, and to extend the provisions of the last-recited act to the said other district lunatic asylums; be it enacted, That from and after the passing of this act any enactment or provision contained in the said recited act of the session holden in the first and second years of his late Majesty King George the Fourth, or in any other act or acts, whereby the number of lunatic poor to be maintained and taken care of in a district lunatic asylum is in any manner limited or restricted, shall be and the same is accordingly hereby repealed; and that notwithstanding any thing in the said last-mentioned act, or in any other act or acts to the contrary, it shall and may be lawful to receive, maintain, and take care of, within every such district lunatic asylum, any number of lunatic poor whatsoever, for the reception and accommodation of whom such asylum shall or may afford space and capacity; and that the care, maintenance, superintendence, and expenditure which shall be or become requisite for or in respect of all such lunatic poor shall be defrayed, raised, and provided for in all respects as the care, maintenance, superintendence, and expenditure requisite for or in respect of such limited number of lunatic poor as before the passing of this act it was or might have been lawful to maintain and take care of in such lunatic asylum might or ought to have been defrayed, raised, and provided for: Provided, nevertheless, that the maximum number of lunatics admissible into such asylums respectively shall first be fixed and determined from time to time by the Lord Lieutenant or other chief governor or governors of Ireland.

Lord Lieutenant authorized to make orders in council for the enlargement of district lunatic asylums.

XIV. And whereas by the said act passed in the seventh year of the reign of his late Majesty King George the Fourth it was amongst other things enacted, that it should and might be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice and consent of his Majesty's privy council in Ireland, from time to time and at all times, whenever and so often as should seem expedient to him or them so to do, to direct and order that any asylum or asylums for the lunatic poor in Ireland should be erected and established in any place or in and for any district in Ireland, in lieu of or in addition to any asylum or asylums erected under the authority of the therein and herein-before recited act of the first and second years of King George the Fourth, and from time to time to alter or change the district or places in or for which any such asylum or asylums shall have been or shall be erected under the authority of the said recited act or the act now in recital: And whereas the said act does not provide for the enlargement or extension of the said district asylums: And whereas the present accommodation in district asylums for pauper lunatics is insufficient, and it is expedient that further accommodation should be provided, so as to enable pauper lunatics to be received into the said asylums as soon as may be after they are afflicted with

insanity, without which it is frequently found impossible to cure the disorder; be it enacted, that if it shall be deemed necessary, at any time hereafter, to enlarge or extend the buildings of any district asylum for the lunatic poor in Ireland, or the out-offices thereof, or to procure more ground fit or necessary to be enjoyed therewith, then and in every such case it shall and may be lawful to and for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice of her Majesty's privy council in Ireland, from time to time, and whenever it shall seem expedient to him or them so to do, to direct and order that such enlargement or extension shall be made, or such additional ground as may be required shall be obtained, or, where it shall be inconvenient or impracticable to erect or obtain additional buildings adjoining to any such district asylum or asylums, then that additional buildings, with the ground fit or necessary to be enjoyed therewith, shall be erected, established, rented, or purchased within the same district, and as near as conveniently may be to such asylums respectively; and such additional buildings and ground shall be held in connexion with and as part of the asylum for the district in which such additional buildings or ground shall be situate; and every order in council to be made for any such purposes shall be published in the *Dublin Gazette*.

8 & 9 Vict. c. 107.

XV. That in order to provide for the more effectual treatment of pauper lunatics, by a better classification of the same, it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland, by and with the advice and consent of her Majesty's privy council in Ireland, from time to time and at all times, whenever and so often as shall seem expedient to him or them so to do, to direct and order that any existing asylum or additional buildings which may be made to existing asylums under the provisions of this act shall and may be exclusively appropriated for the sole and exclusive reception, custody, and treatment of a particular class of the said pauper lunatics distinguishable by the nature and character of the disease, and whether recent in its origin or chronic, or whether considered curable or incurable, or to direct and order that a provincial asylum for the lunatic poor shall be erected, established, and maintained in and for any or each of the provinces of Ireland to be so appropriated to any particular class or classes of lunatic poor of such province as aforesaid, such provincial asylums to be in addition to any district asylum or asylums erected or to be erected under said recited acts or any of them, and from time to time to make rules and orders for the government and control thereof, and for the admission of lunatics thereto; and with the view to make room in any such district lunatic asylum appropriated for the treatment and reception of recent and curable cases for patients deemed capable of cure, it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland from time to time to cause to

Asylums may be appropriated for the exclusive reception of particular classes as to disease of pauper lunatics.

8 & 9 Vict. c. 107. be removed from such district lunatic asylum, to such other asylum connected with such other district, and appropriated specially to chronic cases or cases apprehended to be incurable, any lunatics who shall be certified by the committee of management, the manager, and by the medical officer of such first-mentioned district asylum, as a proper patient to be removed to an asylum for chronic lunatics for such district, or connected therewith.

Powers of recited acts to apply to this act.

XVI. That all enactments contained in the said acts of the first and second years of the reign of his late Majesty King George the Fourth, and of the seventh year of the reign of his said late Majesty, and of the eleventh year of the reign of his said late Majesty, and in any act or acts amending the same or any of them, shall and may from time to time and as occasion may require, so far as the same are applicable, and not repugnant to the provisions hereof, be extended, applied, used, exercised, and enforced to and in respect of any asylums, buildings, or ground which may be erected, purchased, or rented under the provisions of this act, save and except as to such central asylum first herein mentioned; and that the expense of erecting, establishing, and maintaining every district asylum for the lunatic poor in Ireland, and every asylum which under the provisions of this act shall be so exclusively appropriated for the reception of a particular class or description of pauper lunatics, together with the ground so rented or purchased, or the buildings so to be erected or obtained, adjoining to or in connexion therewith respectively, shall be raised in such manner as is directed by said acts or any of them; and that every such asylum shall be subject to all such rules and regulations as are contained in the said recited acts; and that the said acts and this act shall be construed together as one act; and in any case of a provincial asylum erected and established for any province as aforesaid, such province, and the several counties, counties of cities and counties of towns, situate therein, shall be deemed and taken as a district attached to such asylum: Provided always, that the erection and establishment of any such provincial asylum shall not be deemed in any respect to prejudice or interfere with any district lunatic asylum situate therein, or any district assigned or attached to the same, or any provisions relating thereto.

Manner of proceeding where any county, &c. shall be taken out of any district and removed to any new district.

7 Geo. 4, c. 14.

XVII. And whereas by the said recited act of the seventh year of his late Majesty King George the Fourth it is amongst other things enacted, that if it shall at any time happen that any money shall have been raised off any county, county of a city or county of a town, or any part thereof, towards defraying the expenses of erecting, establishing, maintaining, or supporting of any lunatic asylum, and that by reason of any change of the district or place in or for which such asylum shall have been established such county, county of a city or county of a town, or any part thereof, shall be taken out of the district liable to be

assessed for such expenses, then and in such case any sum or sums of money which shall have been raised off such county, county of a city or county of a town, or such part thereof as aforesaid, shall be raised off any and every county, county of a city or county of a town, or any part or parts thereof, which shall remain within such district; and all and every sum and sums which shall be so raised shall be repaid to the treasurer of the county, county of a city or county of a town, which shall have been removed from such district; and that whenever any county, county of a city or county of a town, or any part or parts thereof, which shall have been comprised in any former district, shall by reason of any such change as aforesaid be comprised in or shall form part of any new district, such county, county of a city or county of a town, or such part thereof, shall be and is hereby declared to be subject and liable towards the defraying the expenses of any asylum in or for such new district, in like manner as is directed by the said recited acts or either of them, and as if such county, county of a city or county of a town, or such part thereof, had been originally comprised in or formed part of such new district: And whereas it is expedient that in case of any change of any such district as aforesaid no sum of money should be repaid to the treasurer of any such county, county of a city or county of a town, which shall be removed from such district, save and except for defraying the expense of erecting or establishing such lunatic asylum, but not for the expense of maintaining or supporting the same; be it enacted, that when any change of the district of any district asylum shall be made as aforesaid no sum of money for defraying the expenses of maintaining or supporting any such district asylum (after the same shall have been erected and established) shall from and after the passing of this act be raised off any county, county of a city or county of a town, or any part thereof, which shall remain (or be) within such district, or be repaid to the treasurer of the county, county of a city or county of a town, which shall have been removed from such district, or be raised off any county, county of a city or county of a town, or part thereof, which shall have been comprised in any former district, and shall by reason of any such change be comprised in or form part of any new district for any such asylum, any thing in the said recited enactment to the contrary notwithstanding.

XVIII. And whereas by an act passed in the session of Parliament holden in the sixth and seventh years of his late Majesty King William the Fourth, intituled "An Act to consolidate and amend the Laws relating to the Presentment of Public Money by Grand Juries in Ireland," it is enacted, that when a lunatic asylum, or any ward or wards for the reception and support of idiots and insane persons, is connected with or under the direction of any house of industry in any county, it shall and may be lawful for the grand jury at any summer assizes to

Lunatic wards,
&c. connected
with houses of
industry.
6 & 7 Wm. 4,
c. 116.

8 & 9 Vict. c. 107.

present such sum or sums, not exceeding the sum of one hundred pounds, as shall appear to be necessary for the support of such asylum or ward connected with such house of industry, and such sum shall be raised off the county at large, and levied and applied accordingly: And whereas it is expedient that such places should not be used for the support, reception, or custody of insane persons, when sufficient accommodation for them shall be provided in district asylums; be it therefore enacted, that whenever and as soon as such enlargement and extension of any such district lunatic asylum shall have been made as aforesaid, or any such additional asylum in connexion with any such district lunatic asylum for any such district shall have been erected, or whenever any existing district or provincial lunatic asylum shall be sufficient for the purpose, it shall be lawful for the Lord Lieutenant or other chief governor or governors of Ireland from time to time in any such cases to order and direct that all such idiots or insane poor persons as shall be at the time of such order kept, supported, or detained in any such house of industry, or in any lunatic asylum, or ward or wards for the reception or support of idiots or insane persons connected with or under the direction of any house of industry, shall be forthwith removed to the district or provincial lunatic asylum established for the district or province within which such house of industry shall be situate; and from and after the making of such order, and the publication of the same in the *Dublin Gazette*, such last-mentioned idiots and insane persons shall be accordingly without delay removed to such district or provincial lunatic asylum; and after the making and publication of such order it shall not be lawful to receive into, or support, keep, or detain any idiot or insane poor person in any such house of industry or asylum, or ward connected therewith; and from thenceforth no presentment shall be made by any grand jury for the support of such asylum, or ward in or connected with such house of industry.

Cork Lunatic asylum shall become a district lunatic asylum for the county and the city of Cork, and of such other county, if any, as shall be added thereto.

XIX. That from and after the first day of September next the Cork lunatic asylum shall and may be and become a district lunatic asylum for the county of Cork and the county of the city of Cork, and for such other county or counties, if any, as from time to time may, under the provisions of the said act of the first and second years of his late Majesty King George the Fourth, or any act amending same, be constituted, together with the said county of Cork and county of the city of Cork, a district for a lunatic asylum; and that all rules, orders, regulations, rights, powers, authorities, privileges, liabilities, provisoes, and enactments contained in the said act of the first and second years of King George the Fourth, and of any act or acts amending same, and of this act, shall and may, from time to time as occasion may require, be extended, applied, used, exercised, and enforced to and in respect of the district so constituted, in like manner to all intents and purposes as in the

case of any district lunatic asylum created or established by or subject to the provisions of the said recited act, or any act amending the same, or this act. 8 & 9 Vict. c. 107.

XX. That from and after the said day it shall and may be lawful for the grand juries of the county of the city of Cork and of the county of Cork, and of each other county, if any, which may or shall from time to time constitute part of or be included in the district belonging to the said asylum, and such grand juries are hereby respectively required, to present, to be raised off the said city and each such county respectively, any sum or sums of money requisite to pay the expenses of the said asylum, as well those of any building, alteration, or reparation thereof, or of the purchase of any ground or property for the purposes thereof, as those of the maintenance, clothing, and other charges of the patients therein, in like manner, with the same authorities, and under the same regulations and restrictions, as are provided in and by the said act of the first and second years of his late Majesty's reign with respect to any district lunatic asylum, or any act or acts amending same, or in and by an act passed in the session of Parliament holden in the sixth and seventh years of the reign of his late Majesty King William the Fourth, intituled "An Act to consolidate and amend the Laws relating to the Presentment of Public Money by Grand Juries in Ireland." Grand juries of Cork, &c. shall make presentments for support of such asylum.
6 & 7 Wm. 4, c. 116.

XXI. That from and after the said first day of September the said asylum, and the ground and soil where the same stands, and the several materials and appurtenances, shall be and become vested in such commissioners as have been or shall, pursuant to the provisions of the said recited act of the first and second years of his Majesty, be nominated and appointed for the district to which the said asylum shall belong, or any three of them, and to their heirs and successors, in trust for and to the uses and purposes of the said asylum as such district lunatic asylum. Asylum vested in commissioners under 1 & 2 Geo. 4, c. 33.

XXII. That it shall and may be lawful for the Lord Lieutenant or other chief governor or governors of Ireland for the time being, by and with the advice of her Majesty's Privy Council in Ireland, to make and found such rules and regulations for the holding of lectures by the medical attendant or attendants of the said central asylum, or said provincial or district asylums, or any of them, as to the said Lord Lieutenant or other chief governor or governors of Ireland, with the advice of said privy council aforesaid, may seem fit. Lord Lieutenant may make rules and regulations for the holding of lectures.

XXIII. Whereas it is expedient that more adequate provision be made for the inspection of all lunatic asylums under this and the herein-before recited acts; now be it enacted, That the Lord Lieutenant or other chief governor or governors of Ireland shall be and he or they are hereby empowered, if they shall so think fit, to appoint one or two duly qualified and experienced persons to act as inspectors of lunatics in Ireland; and on such appointments the functions of the inspectors general of prisons Lord Lieutenant to appoint inspectors of lunatics, and functions of inspectors general of prisons vested in them.

8 & 9 Vtct. c. 107. in Ireland, so far as they relate to the inspection of lunatic asylums or other establishments for lunatics, shall be transferred to such inspectors of lunatics so to be appointed under this act, and such inspectors of lunatics shall thereon undertake and perform all the duties in respect to lunatic asylums which heretofore have been undertaken and performed by the inspector general of prisons, under the provisions of any previous act, and under this act.

Inspectors to visit asylums and inquire into the management thereof.

XXIV. That one of the said inspectors shall once or oftener in each year, on such day or days and at such hours of the day and for such length of time as they shall think fit, visit every asylum for lunatics or house for the reception of the same, and every gaol, union workhouse, or house of industry in which there shall be or alleged to be any lunatic, and shall inquire whether the provisions of the law have been carried out in the management of such establishments respectively, and also as to the regularity of the admissions and discharges of patients therein and therefrom, and whether divine service is performed therein, and whether any system of coercion is in practice therein, and the result thereof, and as to the classification or non-classification of patients therein, and the number of attendants on each class, and as to the occupations and amusement of the patients and the effects thereof, and as to the condition as well mental as bodily of the patients when first received, and also as to the dietary of the patients, and shall also make such other inquiries as to every or any such asylum, and all such inquiries as to the lunatics as aforesaid, as to such inspectors shall seem meet.

Registry of admissions, of discharges and deaths, and medical journal, to be kept.

XXV. That from and after the first day of January next ensuing the passing of this act there shall be kept in each district asylum for the lunatic poor which is or may be hereafter established in Ireland a registry of admissions, a registry of discharges and deaths, and a medical journal, in the forms set forth in the schedule to this act annexed, which forms shall be adopted and used hereafter in the place of the forms for similar purposes now in use in such asylums respectively.

Interpretation clause,

XXVI. That the term "Criminal Lunatic" in this act shall be construed to mean any person acquitted on the ground of insanity, or found to have been insane under the provisions of the said act passed in the session of Parliament holden in the first and second years of the reign of his late Majesty King George the Fourth; and the term "Lunatic" shall be construed to mean any insane person.

Act to extend only to Ireland.

XXVII. And be it enacted, That this act shall extend only to Ireland.

SCHEDULE No. 1.

REGISTRY OF ADMISSIONS.—REGISTER OF PATIENTS.*

No. in Order of Admission.	Date of Admission.	Christian and Surname at Length.	Sex.		Age	Condi- tion as to Mar- riage.			Condition of Life and previous Occupation.	Previous Place of Abode.	County, Union, or Parish to which belonging.	By whose Authority sent.	Dates of Medical Cer- tificates, and by whom signed.	Form of Mental Disorder.	Supposed Cause of Insanity.	Bodily Condition and Name of Disease, (if any).	Epileptics.	Congenital Idiots.	Duration of existing Attacks.			Number of previous Attacks.	Age on First Attack.	Date of Dis- charge or Death.	Discharged.			Observations.																
			M.	F.		Married.	Single.	Widowed.											Years.	Months.	Weeks.				Recovered.	Relieved.	Not improved.																	
Dec. 4 1844.	1846: Jan. 3	William } Johnson }	1	..	23	..	1	..	Car- penter	}	..	..	..	Melan- cholia.	..	..	..	..	..	..	4	..	2	17	1846: Sept. 1.	1									
1	1848: June 9	William } Johnson }	1	..	25	..	1	..	..	..	..	..	..	..	..	..	..	..	..	7	..	..	3	..	1848: Dec. 2.	1					
5	1852: May 6	William } Johnson }							..	..	..	..	..	..	..	..	..	..	..	3	..	..	4	..	1853: June 8.	..					
6																																												
7																																												
8																																												

* In the Case of an Asylum receiving both private and pauper Patients, a separate Register in the above Form to be kept for each Class.

SCHEDULE No. 2.

REGISTER OF DISCHARGES AND DEATHS.*

Date of Dis-charge or Death.	Date of last Admis-sion.	No. in Register of Patients.	Chris-tian and Sur-name at Length.	Sex.		Discharged.						Died.		Assigned Cause of Death.	Age at Death.		Observations.
						Reco-vered.		Relieved.		Not im-proved.							
				M.	F.	M.	F.	M.	F.	M.	F.	M.	F.		M.	F.		M.	F.
1846. Sept. 1.	1846. Jan. 3.	1	William Johnson	} 1	.	1	..										
1848. Dec. 2.	1848. June 9.	4	William Johnson		} 1	..	1	..									
1853. June 8.	1852. May 6.	7	William Johnson			} 1	1	..	Phthisis.	27

* In the case of an asylum receiving both private and pauper patients, a separate register in the above form to be kept for each class.

SCHEDULE No. 3.

FORM of MEDICAL JOURNAL.*

Date.	Number of Patients.		Names of Patients under Restraint (and by what Means) and under Seclusion, and for what Period.		Names of Patients under Medical Treatment.		Report on State of Health of Patients and Condition of Asylum.
	M.	F.	Males.	Females.	Males.	Females.	

* In the case of an asylum receiving both pauper and private patients, a separate journal to be kept in the above form for each class.

DISTRICT LUNATIC ASYLUMS IN IRELAND.

9 & 10 Victoria, c. 115.

An Act to amend the Laws as to District Lunatic Asylums in Ireland; to provide for the Expense of the Maintenance of certain Lunatic Poor removed from the Richmond Lunatic Asylum, Dublin, for Want of Room therein; and to provide for the Salaries and Expenses incident to the Office of Inspector of Lunatics in Ireland. 9 & 10 Vict c. 115.
[28th Aug. 1846.]

WHEREAS by an act passed in the session of Parliament holden in the first and second years of the reign of his late Majesty King George the Fourth, intituled "An Act to make more effectual Provision for the Establishment of Asylums for the Lunatic Poor, and for the Custody of Insane Persons charged with Offences, in Ireland," certain provisions were made for the erection and establishment of lunatic asylums in and for districts to be limited and appointed in manner and by the authority in the said act mentioned: And whereas by an act passed in the eleventh year of the reign of his said late Majesty, intituled "An Act for appropriating the Richmond Lunatic Asylum in Dublin to the Purposes of a District Lunatic Asylum," it was among other things enacted, that a certain building commonly known by the name of the Richmond Lunatic Asylum, in the city of Dublin, theretofore established and used as an asylum or hospital for the reception and management of lunatic patients, should and might be and become, and the same has accordingly become, a lunatic asylum for the county of the city of Dublin, and for such other county or counties as from time to time, under the provisions of the said first-recited act of the first and second years of his late Majesty, constituted, together with the said city of Dublin, a district of a lunatic asylum: And whereas, in consequence of the number of lunatic poor whose cases urgently required admission into the Richmond lunatic asylum it became necessary, in the year of our Lord one thousand eight hundred and forty-four, to remove a certain number of the lunatic poor then being inmates of the said asylum, and whose cases did not so urgently require their residence therein, to an hospital or asylum at Island Bridge in the county of Dublin, connected with and attached to the house of industry in the city of Dublin; and such lunatic poor so removed have been kept, superintended, and maintained in the said hospital, and the expenses of such care, superintendence, and maintenance have been defrayed by the poor law commissioners out of certain funds in their hands applicable to the purposes of the said house

1 & 2 Geo. 4,
c. 33.

11 Geo. 4, and
1 Wm. 4, c. 22.

9 & 10 Vict. c. 115. of industry: And whereas it is expedient that the sum so defrayed and expended should be repaid to the said commissioners, and that the expense of the future care, superintendence, and maintenance of such lunatic poor so removed (whilst they continue as inmates of such hospital) should be provided for by the county, counties, or district which would have been or would be respectively chargeable in respect of them, in case they remained as inmates of the said Richmond asylum: It is therefore enacted, that the amount of the sums so heretofore defrayed or expended by the said poor law commissioners in and for the care, superintendence, and maintenance of the said lunatic poor so removed to the said hospital, and of all sums to be hereafter from time to time duly defrayed or expended by the said poor law commissioners in and for the care, superintendence and maintenance in the said hospital of the said lunatic poor, or any other lunatic poor, who, with the consent of the poor law commissioners and of the commissioners of her Majesty's Treasury, may be removed from the said Richmond lunatic asylum, or from the district thereof, to the said hospital, whilst they shall continue therein, to be ascertained by any order of the Lord Lieutenant or other chief governor or governors of Ireland, and privy council in Ireland, shall be raised off and provided for and paid by the same county or counties, county of a city, or district off or by which and in all respects as the sums or expenses requisite for supporting, supplying, and maintaining the same respective lunatic poor would or might be, or ought to have been or to be raised, provided for, and paid in case the same lunatic poor were respectively kept and maintained in the said Richmond lunatic asylum; and the grand jury of each such county, county of a city, or county of a town, or of the county or county of a city or county of a town in which such district may be situated, shall, without any previous proceeding at any presentment sessions, present the sum or sums so to be ascertained accordingly, or in default thereof the same shall be inserted in and raised by an order of the judge of assize or of the Court at any presenting term, which order shall have the force of a presentment, and the sum or sums therein mentioned shall be apportioned and raised and levied accordingly as if the same had been inserted in a presentment duly made at the assizes or presenting term at which such order shall be made; and such sums respectively, when so from time to time raised and provided, shall be paid over to the said poor law commissioners, and by them be placed to the credit of the funds of the said house of industry.

The sums expended by the poor law commissioners in supporting the lunatic poor removed to an hospital from Richmond lunatic asylum, for want of room, to be raised by the districts liable therefor, and repaid to the said commissioners.

Grand jury to present the sums necessary.

In case of change of districts of lunatic asylums the sums to be repaid under recited provisions shall be

II. And whereas by an act of the seventh year of his late Majesty King George the Fourth, intituled "An Act for the further Amendment of an Act of the First and Second Years of his present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland," it is amongst other things enacted,

that if it shall at any time happen that any money shall have been raised off any county, county of a city, or county of a town, or any part thereof, towards defraying the expenses of erecting, establishing, maintaining, or supporting of any lunatic asylum, and that by reason of any change of the district or place in or for which such asylum shall have been established such county, county of a city, or county of a town, or any part thereof, shall be taken out of the district liable to be assessed for such expenses, then and in such case any sum or sums of money which shall have been raised off such county, county of a city, or county of a town, or such part thereof as aforesaid, shall be raised off any and every county, county of a city, or county of a town, or any part or parts thereof, which shall remain within such district; and all and every sum and sums which shall be so raised shall be repaid to the treasurer of the county, county of a city, or county of a town which shall have been removed from such district: and that whenever any county, county of a city, or county of a town, or any part or parts thereof, which shall have been comprised in any former district, shall, by reason of any such change as aforesaid, be comprised in or shall form part of any new district, such county, county of a city, or county of a town, or such part thereof, shall be and is hereby declared to be subject and liable towards the defraying the expenses of any asylum in or for such new district, in like manner as is directed by the said recited acts, or either of them, and as if such county, county of a city, or county of a town, or such part thereof, had been originally comprised in or formed part of such new district: And whereas by the said recited act of the last session of Parliament it is amongst other things enacted, that when any change of the district of any district asylum shall be made as aforesaid, no sum of money for defraying the expenses of maintaining or supporting any such district asylum (after the same shall have been erected and established) shall from and after the passing of this act be raised off any county, county of a city, or county of a town, or any part thereof, which shall remain (or be) within such district, or be repaid to the treasurer of the county, county of a city, or county of a town which shall have been removed from such district, or be raised off any such county, county of a city, or county of a town, or part thereof, which shall have been comprised in any former district, and shall by reason of any such change be comprised in or form part of any new district for any such asylum, any thing in the said recited enactment to the contrary notwithstanding: And whereas it is expedient that the sums payable under the said recited provisions should be paid by instalments and applied as herein mentioned; be it therefore enacted, That the respective sums of money for erecting and establishing any such lunatic asylum so to be raised and repaid as in the said recited provisions mentioned shall be raised and paid in or by instalments or proportions, which in-

9&10 Vict. c. 115.

paid by instalments, and applied in liquidation of the payments which the county transferred from one district shall be liable to make for the asylum of another district.

7 Geo. 4, c. 14.

9 & 10 Vict. c. 115.

instalments or proportions shall, as nearly as the circumstances of the case will admit, be payable at the same periods as the instalments or proportions or sums which any such last-mentioned county, county of a city, or county of a town which shall have been removed or transferred from any such district shall be liable to pay and contribute towards the erection or establishment of any district lunatic asylum in and for the district to which such last-mentioned county, county of a city, or county of a town shall be so transferred; and it shall be lawful for the said Lord Lieutenant or other chief governor or governors and privy council in Ireland by any order to ascertain the instalment or proportion, instalments or proportions, which ought to be so raised and paid, and the times at which the same shall be payable and paid, and the county, county of a city, or county of a town, or part or parts of a county, county of a city, or county of a town, off which each such instalment or proportion ought to be raised; and the grand jury of each such county, county of a city, or county of a town shall, without any previous proceeding at any presentment sessions, present the sum or sums to be ascertained by any such order or orders accordingly, or in default thereof the same shall be inserted in and raised by an order of the judge of assize or of the Court at any presenting term, which order shall have the force of a presentment, and the sum or sums therein mentioned shall be apportioned and raised and levied accordingly as if the same had been inserted in a presentment duly made at the assizes or presenting term at which such order shall be made, and the same shall be so payable and shall be paid at the periods aforesaid to the treasurer of the county, county of a city, or county of a town which shall have been so removed or transferred from any such district; and such treasurer shall pay over and apply such sums when so received, so far as the same shall extend or shall be required, as the case may be, in liquidation and discharge of such instalments so payable by such last-mentioned county, county of a city, or county of a town so transferred as aforesaid.

Persons removed from gaols to district asylums by order of the Lord Lieutenant, not being criminals, may be discharged on medical certificate that they are of sound mind, or not dangerous lunatics.

III. That any person who has been or shall be, by order of the Lord Lieutenant or other chief governor or governors of Ireland, removed from any gaol and admitted into any district lunatic asylum, not being a criminal lunatic within the meaning of the said recited act of the last session of Parliament, may lawfully be discharged from such lunatic asylum without the order of the Lord Lieutenant or other chief governor or governors of Ireland, as in the case of other lunatic poor, in case it shall be duly certified by medical certificate that such person has become of sound mind, or has ceased to be or is not a dangerous lunatic or dangerous idiot: Provided always, that nothing in this provision contained shall apply to any person who, after he or she shall have been committed for trial, or for default of surety to keep the peace, or after he or she shall have

been convicted of any offence, and during his or her imprisonment by reason of such committal or conviction, shall have been removed from any gaol to any such lunatic asylum by virtue of a warrant of the said Lord Lieutenant or other chief governor or governors, under the authority of an act passed in the session of Parliament holden in the first and second years of the reign of her present Majesty, intituled "An Act to make more effectual Provision for the Prevention of Offences by insane Persons in Ireland." 9 & 10 Vict. c. 115.
1 & 2 Vict. c. 27.



STATUTES RELATING TO MADHOUSES IN SCOTLAND.



55 Geo. 3, c. 69.

An Act to regulate Madhouses in Scotland. [7th June, 1815]. 55 Geo. 3, c. 69.

WHEREAS it is expedient that provision should be made for the proper reception and the due care and confinement of furious and fatuous persons and lunatics, in that part of the United Kingdom called Scotland: It is therefore enacted; That from and after the passing of this act it shall and may be lawful for the sheriffs and stewarts depute and substitute, of every county and stewartry in that part of the United Kingdom called Scotland, and they are hereby empowered to grant licenses in the manner directed by this act, for the reception and the care and confinement of furious and fatuous persons and lunatics, within their respective counties and stewartries. Sheriffs to grant licenses.

II. That from and after the expiration of one calendar month after the passing of this act it shall not be lawful for any person or persons to keep a house for the reception and the care or confinement of furious and fatuous persons and lunatics, within any part of Scotland, or to detain any such persons therein, without a license for that purpose granted and received in the manner directed by this act; in which shall be specified the name, description, and age, of every such furious or fatuous person or lunatic; and if any person or persons shall keep a house for the reception and care or confinement of furious or fatuous persons or lunatics, without such license, or shall, upon any pretence whatever, conceal, harbour, entertain, or confine, in any house or place kept for the confinement of furious or fatuous persons or lunatics in any part of the United Kingdom called Scotland, any furious or fatuous person or persons, or No person to keep a mad-house without a license.

50 Geo. 3, c. 69.

Licenses to be renewed every year; rate to be paid for the same; and application of the monies.

lunatic or lunatics, or any person or persons as such, without having a license as required by this act, every such person shall, for every such offence, forfeit the sum of two hundred pounds, and the expenses attending the recovery of the same.

III. That every such license shall be made out by the sheriff or steward clerk of the county or stewartry wherein the same is granted, and the same shall be renewed every year; and for the first and every annual license there shall be paid at the rate of two guineas for every furious or fatuous person or lunatic specified therein; and all monies received by any sheriff or steward clerk for such licenses shall be paid by him, after deducting the sum of two shillings and sixpence, as his fee for making out such license, and form part of the rogue money in such county or stewartry; from which fund all the expenses required to be disbursed in the execution of this act shall be paid and defrayed, upon the order of the sheriff or steward depute of the county or stewartry; and if any sheriff or steward clerk shall neglect or delay so to pay to the collector of the rogue money all monies received by him for such license, subject to such deduction, for the space of ten days after the same shall have been received by him, every such sheriff or steward clerk shall, for every such neglect or delay, forfeit the sum of five pounds, and the expense of recovering the same.

Inspectors to be elected.

IV. That within one calendar month after the passing of this act, and thereafter annually, the Royal College of Physicians in Edinburgh shall elect four of their ordinary resident fellows as inspectors of madhouses; and that the faculty of physicians and surgeons in Glasgow shall in like manner within one calendar month after the passing of this act, and thereafter annually, elect four of their ordinary resident members as inspectors of madhouses.

To inspect madhouses.

V. That within two calendar months after the passing of this act the sheriff depute or substitute of Edinburgh or Mid Lothian shall employ any of the said four fellows of the Royal College of Physicians of Edinburgh to inspect every house which shall be then kept for the reception, care, and confinement of furious or fatuous persons or lunatics within the city of Edinburgh or county of Mid Lothian, and the sheriff depute or substitute of Lanarkshire shall employ any of the said four members of the said faculty of physicians and surgeons of Glasgow to inspect every such house in Lanarkshire; and the sheriff or steward depute or substitutes in every other county or stewartry in Scotland, where any house shall be kept for the reception, care, and confinement of furious or fatuous persons or lunatics, shall employ for the said inspection, physicians qualified to make such inspection, unless where local or other circumstances shall render it inexpedient to employ such physicians, in which case they shall employ either members of the Royal College of Physicians of London, or of the Royal College of Physicians of

Edinburgh or of the Royal College of Surgeons of Edinburgh, 55 Geo. 3, c. 69
or medical men having a diploma from the Royal College of Surgeons of Edinburgh or from the Royal College of Surgeons of London, or from the faculty of physicians and surgeons in Glasgow, or who have acquired a right to practise from having served in the army or navy.

VI. Provided always, and be it enacted, that it shall be lawful for any sheriff or stewart depute or substitute (where, from their distance from the place of inspection or other circumstances, medical persons of the above description cannot be easily procured) to employ any medical person or persons of character to make such or any inspection hereinafter directed by this act; and to pay to every medical person employed by them in the execution of this act such sum of money or reasonable allowance for his attendance and trouble, as to such sheriff depute or stewart depute shall seem adequate; subject to the control and direction of the commissioners of supply of such county or stewartry.

Other medical persons to be employed.

VII. That the said sheriffs and stewarts depute or substitutes shall order and direct every matter and thing to be done which may be necessary, for the purpose of ascertaining whether any person or persons confined in such houses ought to be confined therein as a furious or a fatuous person or persons or lunatic or lunatics, and to make such order for their care or confinement, or for their being set at liberty, as the circumstances of the case may seem to require.

Sheriffs to ascertain whether persons are improperly confined.

VIII. That from and after the passing of this act no person or persons shall be received into any house kept for the reception and the care or confinement of furious or fatuous persons or lunatics, in that part of the United Kingdom called Scotland, without an order made by the sheriff or stewart depute or substitute of the county or stewartry where such house shall be, who shall forthwith satisfy himself as to the propriety of granting such an order, by the certificate or report of medical persons, and otherwise, as the circumstances of the case may seem to require; pursuant to which order a license shall be granted in the manner directed by this act, for which a fee of two guineas shall be paid for every person specified therein, to be accounted for and paid into the rogue money of such county, by the sheriff or stewart clerk, after deducting the sum of two shillings and sixpence, as his fee for making out such license; and every furious or fatuous person or lunatic, for the reception of whom such order shall have been made, shall be specified and described in the next annual license granted to the person or persons by whom he shall have been so received to be taken care of and confined as a furious or fatuous person or lunatic; and if any person or persons shall receive any furious and fatuous person or lunatic, to be taken care of or confined in any such house kept for the reception and the care and confinement of such persons,

Sheriff to make an order for reception of lunatics.

55 Geo. 3, c. 69.

without such order and license, every such person or persons so offending shall for every such offence forfeit the sum of two hundred pounds, and the expenses attending the recovery thereof: And if any medical person shall sign or give any such certificate or report, without having carefully visited and examined the person to whom it relates, and without having endeavoured to ascertain in a proper manner, by such examination or otherwise, that such person is a furious or fatuous person or lunatic, and proper to be confined in a house for the reception of such persons, every such medical person shall forfeit and pay for such offence or neglect the sum of fifty pounds, and the expenses of recovering the same.

Upon a report
or certificate
signed by a
medical person;

IX. That every certificate or report, upon which a sheriff depute or substitute shall give an order for the confinement of any person in a house kept for the reception, care, and confinement of furious or fatuous persons or lunatics, shall be signed by a medical man, who is either a physician, or has a diploma from the Royal College of Surgeons in Edinburgh or of London, or from the faculty of physicians and surgeons of Glasgow, or who has acquired a right to practise from having served in the army or navy, except in those cases where no medical man of the above description can be conveniently applied to, in which event such certificate may be signed by any medical practitioner of character whom such sheriff or stewart depute or substitute may think proper to employ.

Sheriff may make
interim order.

X. Provided nevertheless, and be it enacted, that it shall and may be lawful for any such sheriff or stewart depute or substitute to make such order, or to give such directions, as the circumstances of the case may seem to require, for the care and confinement of any furious or fatuous person or lunatic, in the mean time, until he shall be satisfied that he ought to grant an order for the reception and the care and confinement of any such person in any house kept for the reception and care and confinement of furious or fatuous persons or lunatics, in the manner hereby directed, not exceeding a period of fourteen days.

Madhouse to be
inspected twice
a year.

XI. That every house kept for the reception and care or confinement of furious or fatuous persons or lunatics in Scotland, shall be inspected at least two several times in the year, once by the sheriff or stewart depute or substitute, and once by the sheriff or stewart depute in person, of the county or stewartry wherein the same shall be situated, and such of the medical inspectors above described, and, failing them, such medical person or persons as he shall think proper to direct to accompany him, on such day or days as he shall think proper from time to time to appoint for that purpose; and it shall and may moreover be lawful for such sheriff or stewart himself to inspect, or to order such inspection to be made, as often as he may think proper.

XII. That it shall be lawful to any of the said inspectors appointed by the Royal College of Physicians in Edinburgh, at any time with concurrence of the sheriff depute of Mid Lothian, and to any of the said inspectors appointed by the faculty of physicians and surgeons of Glasgow, with concurrence of the sheriff depute of Lanarkshire, to inspect any of such houses for the reception, care, and confinement, of furious or fatuous persons or lunatics within the respective districts of the said sheriffs, and to report to the said sheriff deputies; Provided always, that for such inspections no sum of money shall be paid, and no allowance given for attendance and trouble.

55 Geo. 3, c. 69,
Inspectors may
inspect at any
time.

XIII. That if, upon any inspection made as directed by this act, it shall appear that any person or persons are improperly detained in any such house as aforesaid, it shall and may be lawful for the sheriff or steward depute, or steward of the county or stewartry where such improper detention shall take place, to set such person or persons at liberty, or otherwise to do in the premises as the circumstances of the case may seem to require.

Sheriff or steward
may set persons
improperly
detained at
liberty.

XIV. That it shall and may be lawful for any sheriff or steward depute to recall any license which may have been granted pursuant to this act, if it shall appear to him proper so to do, upon a report to that effect made to him by any two of the inspectors acting under the authority of this act as aforesaid.

License may
be recalled.

XV. That it shall and may be lawful for the sheriff and steward depute of every county or stewartry in Scotland, from time to time to make such rules and regulations as such sheriff or steward may think proper, for the proper management of houses kept for the reception and the care or confinement of furious or fatuous persons or lunatics within their several counties or stewartries, which may tend to the due preservation of the health, and ensuring the proper treatment of the persons confined therein, and to enforce the same by such penalties not exceeding the sum of twenty pounds for each offence, as such sheriff or steward depute shall think proper, to be recovered and applied as any penalty or forfeiture granted by this act may be recovered and applied; such rules and regulations being always first duly notified in writing to the person or persons by whom any such house or houses may be kept.

Sheriff may
make rules and
regulations.

XVI. Provided always, and be it enacted, that before any such rules and regulations shall be put in force the said sheriff or steward depute shall transmit a copy of the said rules and regulations to the clerk of the High Court of Justiciary, who shall lay the same before the lords commissioners of justiciary for their consideration, and such lords commissioners of justiciary shall forthwith signify to the said sheriff or steward depute what shall appear to them thereupon, and upon being approved of by the said lords commissioners of justiciary, all

Regulations to
be transmitted
to the clerk of
the Court of
Justiciary.

55 Geo. 3, c. 69.

such rules and regulations shall receive effect in the manner in which they shall have been finally settled pursuant to such communication thereof so made to the said lords commissioners of justiciary, who shall cause the same to be inserted in the records of such Court.

Act not to extend to public hospitals;

XVII. Provided always, and be it enacted, That nothing in this act contained shall extend or be construed to extend to any of the public hospitals, or public lunatic asylums in Scotland, further than to authorize the said sheriffs or stewarts to visit and inspect the same, or to order such inspection as aforesaid.

nor to where only one person is confined.

XVIII. Provided also, and be it enacted, That nothing in this act contained shall extend or be construed to extend to any house where only one furious or fatuous person or lunatic is confined, unless such person shall be confined in such house for gain or reward.

Procurator fiscal to enforce the act and recover penalties.

XIX. That it shall and may be lawful for the procurator fiscal of every county or stewartry where any house for the reception and the care or confinement of furious or fatuous persons or lunatics is situated, and he is hereby required to enforce the due execution of this act, and to sue for and recover all penalties or forfeitures granted by this act, by action or complaint before the court of session, or the sheriff or stewart's court: Provided always, that such action or complaint shall be brought within twelve calendar months after the offence shall have been committed, or the penalty incurred.

Application of penalties, and provision for the expense of executing the act.

XX. That all penalties recovered by virtue of this act shall be paid into and form part of the rogue money of the county or stewartry by whose procurator fiscal the same shall have been recovered; and all the expenses incurred in carrying this act into execution shall be paid out of such rogue money.

Sheriff to transmit accounts to commissioners of supply.

XXI. That the sheriff or stewart depute or substitute of every county or stewartry in Scotland, where any house is kept for the reception and the care or confinement of furious or fatuous persons or lunatics, shall lay before or cause to be transmitted, an account of all expenses incurred by his directions in carrying this act into execution, and of all monies received by the sheriff or stewart clerk of his county or stewartry, for any license or licenses granted in pursuance of this act, and of all monies recovered by the procurator fiscal of his county or stewartry, by virtue of this act, to the commissioners of supply of his county or stewartry, on the day on which they assemble in every year for the assessment of the land tax.

Sheriff to transmit accounts to college of physicians, and to Courts of justiciary.

XXII. That the sheriff or stewart depute or substitute of every county or stewartry in Scotland, where any house is kept for the reception and the care or confinement of furious or fatuous persons or lunatics, shall at the same time transmit a copy of such account, with a report of all that shall have been done by and under his direction in the execution of this act, containing a statement of the number of houses kept in their respective

counties or stewartries, for the reception and the care or confinement of furious or fatuous persons or lunatics, and the names, number, and description of persons confined therein, to the president of the Royal College of Physicians in Edinburgh, and also to the clerk of the High Court of Justiciary at Edinburgh, who shall cause such account and report to be inserted in the records of such Court. 55 Geo. 3, c. 69.

XXIII. That the powers and authorities granted by this act to sheriffs and stewarts depute and their substitutes shall be without prejudice and in addition to all powers and authorities now competent to them by law; all which powers and authorities shall and may be exercised in the execution of this act, as well as the powers and authorities hereby granted. Powers granted by this act to be without prejudice to powers granted by law.

XXIV. That this act shall be deemed and taken to be a public act; and shall be judicially taken notice of as such, by all judges, justices, and others, without being specially pleaded. Public act.

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9 Geo. 4, c. 34.

An Act for altering and amending an Act passed in the Fifty-fifth Year of the Reign of his late Majesty, intituled An Act to regulate Madhouses in Scotland. 9 Geo. 4, c. 34.
[27th June, 1829.]

WHEREAS an act was passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled "An Act to regulate Madhouses in Scotland, which requires to be altered and amended in some respects; be it therefore enacted, that for and in respect of any license to be granted by any sheriff, for the care and confinement of any factious† or furious person, or lunatic, within his county, in the manner directed by the said recited act, there shall be paid only ten shillings and sixpence for every person confined, in place of two guineas, as required by the said recited act, to be accounted for in the manner thereby directed: Provided always, that for no license to be so granted shall there be paid less than the sum of two guineas. 55 Geo. 3, c. 69.

II. That a book shall be kept in every house so licensed, in which shall be inserted the name and date of admission of every insane person into such house, and also the death or discharge of every such person, specifying the state of mind in which such person was at the date of such death or discharge, and the cause of his or her death. What sums shall be paid for licenses granted for the care of insane persons.
† Sic.

III. That whenever any coercion, severity, or restraint, beyond that of solitary confinement, shall be used towards any person confined in such house, an entry shall be made in the foresaid book on the same day on which such coercion, severity, or Books to be kept for entering the time of admission and of discharge of insane persons.
Whenever coercion shall be made use of towards any person confined, an entry thereof

9 Geo. 4, c. 34.

to be made in
such books.

Books to be
produced to
inspectors, who
are to insert the
date of their
inspection, &c.

No insane person
to be received
into an hospital
without a war-
rant from the
sheriff, who is
to inspect
hospitals.

Houses of recep-
tion to be visited
by medical men.

Ministers em-
powered to visit
madhouses
within their
parishes.

restraint shall be first used, setting forth the nature of such coercion, severity, or restraint, together with the special cause thereof; and it is further provided, that the keeper of such house shall make or cause to be made an entry in said book on each succeeding day during which such coercion, severity, or restraint may be continued, shewing the progress of the disorder, and how far such coercion, severity, or restraint has been increased, diminished, continued, or put an end to, as also the reasons for the continuance or change of such treatment.

IV. That such book or books shall be produced to the inspectors authorized to visit and inspect such houses, which inspectors are hereby required to mark thereon the date of such inspection, together with any observations which they may deem material as to the state of such house, or of all or any of the persons therein confined; and any keeper of such house who shall neglect to keep the books hereby ordered, or to make therein any of the entries hereby ordered, at the times and in the terms hereby prescribed, or who shall refuse or neglect to produce such books when duly required, shall forfeit the sum of five pounds for each offence, to be recovered in the same manner as penalties may be recovered under the said recited act.

V. That no insane person shall be received into any public hospital or public lunatic asylum without a warrant from the sheriff, such as is required by the said recited act in the case of a private madhouse; and the said sheriff is hereby required to inspect such hospitals and asylums in the same way as private madhouses; and he is further authorized to order any person to be discharged from such hospital or asylum, who after due inquiry and medical inspection, shall be considered by him as improperly detained therein.

VI. That in every house of reception for two or more insane persons there shall, if it contain one hundred patients, be a resident physician or surgeon; and every such house containing less than one hundred patients, (in case such house shall not be kept by a physician or surgeon), shall be visited twice in every week by a physician or surgeon; and such resident attendant or visiting physician or surgeon is hereby respectively required to report to the keeper the condition of the house, and state of health of the patients, and shall once in every week enter and sign the same in a register, according to the form in the schedule hereunto annexed; and such register shall by the keeper of such house be regularly laid before the inspectors appointed by this and the before-recited act, who are hereby required to sign the same in testimony of its production.

VII. Provided always, and be it further enacted, that the established minister of the parish wherein any house for the reception of insane persons is situate, with the consent in writing of the sheriff, shall have liberty to visit all such houses at any hour between eight in the morning and eight in the evening;

but notwithstanding such written consent as aforesaid, the keeper of any such house may refuse such minister access to any patient, if he shall think such visit prejudicial to the due care or recovery of the patient, provided such refusal, and the grounds thereof, shall be duly entered in the register and reported by such keeper to the inspectors at their then next ensuing visitation. 9 Geo. 4, c. 34.

VIII. That no person shall receive into his exclusive care and maintenance, except he be a relative, any one insane person, without first having an order and certificate signed by two physicians or surgeons in terms similar to that which is required on the admission of any insane person into a licensed house; and that every such person so having received into his charge any insane person as aforesaid shall, within five days thereof, transmit to the sheriff of the county a copy of such certificate, and shall also state the parish wherein such house shall be situate, and the name of the occupier thereof; and such order and return may be sealed, and indorsed "Private return;" and also on the first day of January, or within seven days thereof, in every year, every such person shall also transmit to such sheriff a certificate signed by two physicians or surgeons, describing the then actual state of such insane person; and in case of the death or removal of such insane person, he shall forthwith notify the same to such sheriff; all which said certificates and notifications shall be duly preserved; and the said sheriffs shall make or cause to be made therefrom a separate register, containing the true Christian and surname of each insane person so confined, together with the place of confinement; which register shall be open to the inspection of his Majesty's principal Secretary of State for the Home Department, or the Lord President of the Court of Session, or the Lord Justice Clerk, or to such other persons as shall be authorized to inspect the same, by an order under their respective hands; and any person receiving into his care any person contrary to this enactment, shall incur a penalty of fifty pounds, to be recovered in the manner before specified. Regulations as to persons with whom lunatics are privately confined.

IX. Provided always, and be it further enacted, That it shall and may be lawful for his Majesty's said principal Secretary of State, in all cases in which any such patient shall have been discharged cured, upon his or her application, verified, as to the identity of person and other facts, to the satisfaction of such Secretary of State, to direct that the name of such patient shall be wholly erased from the said register. Secretary of State empowered to erase name of lunatic from register.

X. That it shall and may be lawful for the justices of the peace of every county in Scotland to name and appoint, at a Court of quarter sessions to be held annually on the same day on which the Michaelmas meeting of freeholders takes place, if they shall think fit so to do, any three of their number to visit and inspect any private madhouses or asylums for the custody of lunatics situated in such county; and such three justices so Justices may appoint three of their number to inspect hospitals, &c.

9 Geo. 4, c. 34.

appointed, or any two of them, shall have power to visit and inspect any such madhouses or public hospitals or asylums in their county accordingly, and to report annually there anent to the justices met in quarter sessions as aforesaid.

This act and the recited act to be construed together.

XI. That this act shall be deemed and taken to be a part of the said recited act; and this act and the said recited act shall be construed together, in giving effect to the said recited act and this act.

SCHEDULE.

WEEKLY REGISTER to be kept in each house and to be laid before the Inspectors.*

Number of curable men.	Number of incurable men.	Number of curable women.	Number of incurable women.	Number of men under restraint.	Number of women under restraint.	General remarks.

* In cases of restraint the necessity to be certified by the physician, surgeon, or apothecary.

4 & 5 Vict. c. 60.

4 & 5 Vict. c. 60.

An Act to alter and amend certain Acts regulating Madhouses in Scotland; and to provide for the Custody of dangerous Lunatics.
[22nd June, 1841.]

55 Geo. 3, c. 69.

WHEREAS an act was passed in the fifty-fifth year of the reign of his Majesty King George the Third, intituled "An Act to regulate Madhouses in Scotland (a);" and another act was passed in the ninth year of the reign of his Majesty King George the Fourth, intituled "An Act for altering and amending an Act passed in the fifty-fifth year of the reign of his late Majesty, intituled "An Act to regulate Madhouses in Scotland (b):"

9 Geo. 4, c. 34.

(a) *Ante*, pp. 829—835.

(b) *Ante*, pp. 835—838.

And whereas it is expedient that the said recited acts should be altered and amended; it is therefore enacted, That from and after the expiration of one calendar month after the passing of this act, any person who shall send or deliver, or be accessory to the sending or delivering, without a license for that purpose, in terms of the said recited acts, any furious or fatuous person, or any lunatic, or any person as such, to the custody or keeping of any person having or keeping a house for the reception of furious or fatuous persons or lunatics, whether such house shall be licensed or not in terms of the said recited acts, shall for such offence forfeit and pay a penalty of two hundred pounds, and the expenses of recovering the same; and such penalty shall be recovered and applied in such and the like manner as penalties are by the said first-recited act directed to be recovered and applied.

4 & 5 Vict. c. 60.

Penalty on persons sending any lunatics to a madhouse without a license.

II. That it shall be lawful for the Court before whom any person who shall be convicted of keeping a house for the reception and care or confinement of furious or fatuous persons or lunatics, or detaining therein, or of receiving, concealing, harbouring, entertaining, or confining, any furious or fatuous person or lunatic, or any person as such, without a license for that purpose in terms of the said recited acts, or who shall be convicted of receiving any furious or fatuous persons or lunatic for care or confinement therein, without the order or license for the reception of such furious or fatuous person or lunatic required by the said recited acts and this act, or who shall be convicted of sending or delivering, or being accessory to sending or delivering, without a license for that purpose in terms of the said recited acts and this act, any furious or fatuous person or lunatic, or any person as such, to the custody or keeping of any person having or keeping a house for the confinement of furious or fatuous persons or lunatics, either to find the person so convicted liable in any penalty by the said recited acts or this act imposed, or to find such person liable to imprisonment for each such offence, for any space not exceeding three calendar months; and in case the sentence shall be for a penalty it shall be lawful for the Court to declare, and to grant warrant accordingly, in the decree, that in the event of the penalty not being paid within a period to be specified by the Court the party found liable in such penalty shall in lieu thereof be imprisoned for a period not exceeding three calendar months.

Persons convicted of receiving lunatics without a license, or the required order, may be imprisoned in default of penalty.

III. That where any furious or fatuous person or lunatic shall have been apprehended charged with assault or other offence inferring danger to the lieges, or where any furious or fatuous person or lunatic being in a state threatening danger to the lieges shall be found at large, it shall be lawful for the sheriff, upon application by the procurator fiscal, accompanied by a medical certificate as to the condition of such person from some medical person, who is either a physician or has a diploma from

Sheriff, on application of procurator fiscal, may commit dangerous lunatics.

4 & 5 Vict. c. 60.

the Royal College of Surgeons in Edinburgh or London, or from the faculty of physicians and surgeons of Glasgow, or who has a right to practise from having served in the army or navy, forthwith to commit such furious or fatuous person or lunatic unto some place of safe custody; and the sheriff shall thereupon direct notice to be given to the next of kin (if known), or other known relatives of such furious or fatuous person or lunatic, and shall also direct notice to be given in some newspaper circulated within the county of such commitment, and of his intention to inquire into the condition of such furious or fatuous person or lunatic on an early day to be named; and the sheriff shall at the time named proceed to take evidence of the condition of such furious or fatuous person or lunatic, and upon being satisfied that he or she is furious or fatuous, or a lunatic, and dangerous, he shall commit him or her to any private madhouse licensed under the said recited acts, or into any public hospital or public asylum willing to receive him or her: and in case there shall be no private licensed madhouse, or public hospital or public asylum, within the jurisdiction of such sheriff, he shall commit such furious or fatuous person or lunatic to some licensed private madhouse, or public hospital or public asylum, of some adjoining county, willing to receive him or her; and a license shall be granted in respect of every such commitment to any licensed private madhouse, as prescribed by the said recited acts, and such furious or fatuous person or lunatic shall be there detained until his or her cure, or until caution shall be found for his or her safe custody, in which last case it shall be lawful for the sheriff, upon being satisfied as to such caution, and the safety and propriety of such custody, to authorize the delivery of the furious or fatuous person or lunatic to the person so finding security; and the procurator fiscal is hereby authorized and required to contract with the keeper of the madhouse, hospital, or asylum to whose care such furious or fatuous person or lunatic is committed, for the expense of his or her keeping or maintenance therein.

Power to sheriff
to transmit
such lunatic to
another county.

IV. That if any furious or fatuous person or lunatic, in respect of whom application shall be made to the sheriff of any county as aforesaid, shall have his known domicile or settlement or usual place of haunt and resort in another county, then it shall be lawful for the sheriff, either to follow out the provisions of this act in regard to such furious or fatuous person or lunatic, or, before further proceeding, to transmit along with the said application such furious or fatuous person or lunatic, in safe custody, to the sheriff of such other county, to whom it shall be lawful to proceed as if the application had been made to him in the first instance.

Expenses how to
be defrayed.

V. That the expenses of the procurator fiscal incurred in respect of any such application to the sheriff (being first taxed by the sheriff) shall be paid out of the rogue money of the

county, and the clerk of supply is hereby required to pay the same, as also such expense as may be incurred in keeping and maintaining any such furious or fatuous person or lunatic committed upon such application: Provided always, that such expense of keeping and maintenance, together with the license duty, shall be defrayed by such furious or fatuous person or lunatic, if he or she has the means of defraying the same; or if such expense cannot, in the opinion of the sheriff, be immediately recovered from such furious or fatuous person or lunatic, or out of his or her estate, then the same shall be defrayed by the parish which would be liable for the maintenance of such furious or fatuous person or lunatic if he or she were a pauper; and it shall be competent to the sheriff, at the time of granting warrant of commitment to such licensed madhouse or public hospital or public asylum, if such furious or fatuous person or lunatic shall not be known to be in the possession of any adequate means or estate, also to pronounce judgment in favour of the procurator fiscal for such sum as may be necessary for the maintenance of such furious or fatuous person or lunatic in such licensed madhouse or public hospital or public asylum, against the parish which in the opinion of the sheriff would be liable, either *ad interim*, or permanently or ultimately, or with relief for the maintenance of such person; which judgment shall be final and conclusive, and not subject to review, by suspension, advocacy, or reduction, or otherwise; but reserving always to the parish paying such sum and expenses its recourse against all others liable therefor, as accords of law: Provided also, that the procurator fiscal shall repay to the clerk of supply out of the monies so to be recovered, the sums which such clerk of supply, shall have advanced for the keeping and maintaining of such furious or fatuous person or lunatic, as hereinbefore provided.

VI. That if the procurator fiscal of any county shall make application to the sheriff for the removal of any furious or fatuous person or lunatic from any licensed madhouse, accompanied by a certificate of two medical men, qualified as aforesaid, to the effect that such licensed madhouse is unfit or unsuitable for the confinement of such furious or fatuous person or lunatic, it shall be lawful for the sheriff thereupon to grant warrant for the removal of such furious or fatuous person or lunatic from such licensed madhouse to some other licensed madhouse to public hospital or asylum, either in his own or in some adjoining county: Provided always, that intimation of the intended application shall be given (to be proved to the satisfaction of the sheriff) to the party at whose instance such furious or fatuous person or lunatic was confined; and the expenses attending such application for removal, and of the keeping and maintenance of such furious or fatuous person or lunatic in the public hospital or asylum or licensed madhouse to which he or she shall be so removed, shall be defrayed by the party liable for the expense of the keeping

Lunatic may be removed on application by procurator fiscal.

4 & 5 Vict. c. 60.

4 & 5 Vict. c. 60.

Parish pauper lunatics to be confined in public hospitals.

If no public hospital in the county, the sheriff may send lunatics to an adjoining county.

Death of lunatic to be intimated.

Register to be kept.

Register book to be transmitted yearly to the sheriff clerk.

and maintenance of such furious or fatuous person or lunatic in the public hospital, public asylum, or licensed madhouse from which he or she shall be so removed.

VII. That all parish paupers, furious or fatuous persons or lunatics, to be confined under the power of the said recited acts and this act, shall be sent to a public hospital or public asylum, unless the sheriff, on cause shown to his satisfaction, shall be of opinion, that in the special circumstances of the case it is more expedient to commit any such parish pauper, furious or fatuous person or lunatic, to a licensed madhouse.

VIII. That it shall be lawful for any sheriff, in whose county there shall be no public hospital or public asylum, to authorize the confinement of any furious or fatuous person or lunatic in a public hospital or public asylum or licensed madhouse of any adjoining county: Provided always, that in the case of a parish pauper, furious or fatuous person or lunatic, proposed to be so sent to any licensed madhouse, the consent of the sheriff of the county in which such licensed madhouse is situated shall be first had and obtained thereto.

IX. That the death of any furious or fatuous person or lunatic in any licensed madhouse shall, within twenty-four hours after the same shall have happened, be intimated in writing by the person keeping such madhouse to the sheriff of the county in which the same is situated, accompanied by a certificate from the medical person who shall have attended such deceased person, setting forth the nature of the disease occasioning the death, how long such disease had continued, and when such medical person was first required to give special attendance upon the deceased, and how often he thereafter visited him or her; and such certificate shall also set forth whether any undue delay had occurred in calling for the assistance of such medical person; and any person, keeping or in the care and management of any licensed madhouse, failing to make such intimation, shall be liable in a penalty not exceeding twenty pounds, and in default of payment of such penalty the defaulter shall be liable to imprisonment, by warrant of the sheriff, for any period not exceeding three calendar months.

X. That in every licensed madhouse there shall be regularly kept a book, to be intituled "Madhouse Register," in which shall be distinctly set forth all the particulars relating to every furious or fatuous person or lunatic who shall be received or detained in such madhouse enumerated in the schedule hereunto annexed.

XI. That such register book, exhibiting all such particulars up to the latest possible date, shall, after being carefully sealed up, be transmitted, on or before the fifth day of January in each year, to the sheriff clerk of the county in which such licensed madhouse is situated, or if any such madhouse shall be given up or discontinued as such during the currency of the year, then within a week of the giving up or discontinuing the same; and

any keeper of any such madhouse, disregarding or neglecting 4 & 5 Vict. c. 60.
any of these provisions, either as to the keeping of such register,
or duly transmitting the same, shall for every such offence be
liable in a penalty not exceeding twenty pounds.

XII. That the sheriff clerk of every county receiving such Register book to
be preserved.
register book shall, without breaking the seals affixed thereto,
exhibit the same to the sheriff, who, after making such examin-
ation thereof as he may deem proper, shall again seal up such
register book, and shall cause the same to be preserved in the
sheriff clerk's office; and it is hereby specially provided that
such seals shall not be broken, or any inspection of the contents
of such register book take place, without any cause shown to the
satisfaction of the sheriff, or without his written authority; and
any person removing any such seals, or taking or admitting to
be taken any inspection of the contents of such register book,
without such written authority, shall be liable in a penalty not
exceeding twenty pounds.

XIII. That where it shall appear, from the annual accounts Fees of licenses
may be dimi-
nished.
rendered by the sheriff of the expenses incurred by his direction
in carrying the said recited acts and this act into effect, that the
monies received by the sheriff clerk for licenses granted under
the said acts, together with the monies received by the procu-
rator fiscal for penalties imposed by virtue of the said recited
acts and of this act, exceed the sums required for carrying the
same into execution, it shall be lawful for the sheriff and he is
hereby required from time to time to take and direct to be taken
for each of such licenses such smaller sum as will in his estima-
tion be adequate to defray such expenses, and no more; and
thereafter, if such smaller sum shall not be found to prove
adequate, again to raise the same to such sum as shall in his
estimation be adequate to meet such expenses, and no more;
such sum in no case to exceed the sums authorized to be taken
by the said recited acts and this act.

XIV. That the said recited acts shall apply to and be inter- Recited acts to
be interpreted
with this act.
preted with this act for the more effectually in all respects
carrying the same into execution.



to Francis Barlow and Edward Winslow, Esqrs., the Masters in Lunacy therein named, to inquire whether (*name and description of alleged lunatic*),

be a lunatic or not. These are therefore to will and require you to cause to come and appear before the said Masters in Lunacy or one of them, twenty-four honest and lawful men of your county, on Monday, the day of at o'clock in the

noon of that day precisely at the house of commonly called and known by the name or sign of

situate at and then and there upon their oath to inquire of the lunacy of the said A. B. and of all such

matters and things as shall be given them in charge by virtue of the said commission, and hereof fail not at your peril. Given under the hand and seal of me Esquire, one of the

said Masters, this day of One thousand eight hundred and forty-six.

To the Sheriff of the }
county of }
or his deputy. }

Signature and Seal of Master
in Lunacy.

The return of the Sheriff indorsed on the back of the Precept.

The execution of this precept appears in the panel hereto annexed.

The answer of C. D. Esq., Sheriff, Essex.—Names of the jurors to inquire according to the tenor of the precept annexed. [*Here follow the names of the jurors.*]

Summons to produce alleged Lunatic.

L. S.

By virtue of a commission in the nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster, the day of in the year of the reign of our Sovereign Lady Queen Victoria, directed to and Esquires, the Masters in Lunacy, to inquire whether of in the county of be a lunatic or not. These are to will and require you to produce before the said Masters in Lunacy, or one of them, the said at the execution of the said commission at the house commonly called or known by the name of situate at on the day of (instant) by of the clock in the forenoon on the same day precisely, there to be examined touching the matters aforesaid. And you are to give (him) notice accordingly, as also to any other person or persons who are guardians of (him) or trustees of (his) estate, that they may appear in (his) defence if they shall think fit. Given under

Oath of Foreman of Jury.

You shall well and truly inquire of the lunacy of A. B. by virtue of her Majesty's commission just read, and of all such other matters and things as shall be given you in charge by virtue of such commission, and a true verdict give according to the evidence,
So help you God.

Oath of remainder of Jury.

The same oath your foreman hath taken on his part you and each of you shall well and truly observe and keep on your respective parts,

So help you God.

Oath of Witness.

The evidence you shall give to the Court and jury sworn touching this inquiry shall be the truth, the whole truth, and nothing but the truth,

So help you God.

Oath of Interpreter.

You shall well and truly interpret to the witness all such questions as shall be demanded of (her or him) by virtue of this commission and (her or his) answer thereto,

So help you God.

Affirmation of a Quaker Juror.

I, C. D., do solemnly and sincerely affirm and declare that I will well and truly inquire of the lunacy of A. B. by virtue of her Majesty's commission just read, and of all such other matters and things as shall be given me in charge by virtue of such commission and a true verdict give according to the evidence.

Affirmation of Quaker Witness.

I, C. D., do solemnly and sincerely affirm and declare that the evidence I shall give the Court and jury touching this inquiry shall be the truth the whole truth and nothing but the truth.

Form of Inquisition.

Essex (to wit).

An inquisition taken at the house of situate at
 in the county of commonly called or known by the name
 or sign of this day of in the
 year of the reign of our Sovereign Lady Victoria by the grace of
 God of the United Kingdom of Great Britain and Ireland, Queen,
 defender of the faith and in the year of our Lord One thousand
 eight hundred and forty before Esquire, one of the
 Masters in Lunacy of our said lady the Queen, by virtue of her
 Majesty's commission in the nature of a writ *de lunatico inquirendo*
 under the great seal of Great Britain bearing date at Westminster,
 the day of to the said Francis Barlow and to
 Edward Winslow, Esquires, the Masters in Lunacy directed and to
 this inquisition annexed, to inquire amongst other things of the
 lunacy of

in the county of upon the oath of (*names of jurors*)

good and lawful men of the said county who being sworn and
 charged upon their oath say that the said at the time of
 taking this inquisition is a lunatic [or of unsound mind as the case
 may be] so that he is not sufficient for the government of himself,
 his manors, messuages, lands, tenements, goods, and chattels, and
 that he the said A. B. hath been in the same state of lunacy [or
 unsoundness of mind] from the day of in the year
 of our Lord One thousand eight hundred and but how or
 by what means he the said A. B. so became lunatic [or of unsound
 mind] the jurors aforesaid know not, unless by the visitation of
 God. And the jurors aforesaid upon their oath aforesaid further
 say that whether the said A. B. being in the same condition hath
 alienated any lands or tenements, as also what lands or tenements,
 goods and chattels as yet remain to the said A. B. the jurors aforesaid
 know not. And the jurors aforesaid upon their oath aforesaid further
 say that who is the nearer heir of the said A. B. they know not, in tes-
 timony whereof as well the said Master in Lunacy Esquire,
 as the jurors aforesaid have to this inquisition set their seals the day
 and year and place first above written.

[*Name and seal of*
Master in Lunacy.]

[*The names and seals*
of the jurors.]

Bond given by the Committee of the Estate of a Lunatic and his
Sureties (a).

Know all men by these presents, that we [*the committee of*
the estate and two sureties] are bound and firmly obliged to our
 most serene Lady Victoria, by the grace of God of the United

(a) See *ante*, pp. 191—197.

Kingdom of Great Britain and Ireland, Queen, defender of the faith, in pounds of good and lawful money of Great Britain, to be paid to the same lady the Queen, her heirs, or successors; to which payment well and truly to be made, we bind ourselves, and every of us, jointly and severally, our heirs, executors, and administrators, and the heirs, executors, and administrators of each of us firmly by these presents sealed with our seals. Dated this day of in the year of the reign of our said now lady the Queen, &c., and in the year of our Lord, one thousand eight hundred and

The condition of the above written obligation is such that whereas the Right Honourable Lord High Chancellor of Great Britain, hath given directions that the above bounden [*committee*] shall have a grant under the Great Seal of Great Britain of the custody of the person and management of the real and personal estate of [*lunatic*], residing at a person of unsound mind, he being unable to govern himself or to manage his estate during the continuance of his lunacy [or unsoundness of mind]. If therefore, the said [*committee*] shall yearly, or oftener if he be thereunto required, make a just and true account of all and singular the rents, issues, and profits of the real estate of the said [*lunatic*], and also of his personal estate, and the profits thereof as now are, or hereafter shall, come to his hands, custody or possession, or which he may receive out of or concerning the said estate, and shall carefully observe, perform, and keep, the orders and directions of the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of Great Britain for the time being, made, or hereafter to be made, touching or concerning the said [*lunatic*] and his estate, and touching all such monies as shall yearly remain due upon the foot of the account duly taken by one of the Masters in Lunacy, and filed in the office for that purpose appointed; and shall be careful to see the houses, buildings, and structures of the said [*lunatic*] to be well and sufficiently repaired and so kept and maintained during the continuance of the said grant; and shall carefully preserve and keep all the deeds, evidences, and writings, touching the manors, messuages, lands, tenements, hereditaments, and estates of the said [*lunatic*], as now are, or hereafter shall come to his hands, custody, or possession; and shall carefully provide for the person of the said [*lunatic*], and for his safety, and for his family, if any be or shall be during the continuance of the said grant, and shall not sell or alien his interest in the said custody or grant to any person or persons whomsoever, without the consent or agreement of the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners for the custody of the Great Seal of Great Britain for the time being, but shall in all things demean himself as a careful and faithful grantee or committee of the person and estate of the said [*lunatic*], then the said obligation to be void, or the else same to stand, remain, and be in full force and virtue.

Grant of the Custody of the Person and Estate of a Lunatic (a).

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to all to whom these our present letters shall come, greeting. Whereas, by a certain inquisition taken at the house of _____ situate at _____ in the county of Middlesex, commonly called or known by the name of _____ the _____ day of _____ in the _____ year of our reign, by virtue of our commission, in the nature of a writ *de lunatico inquirendo*, in that behalf duly made and issued, to inquire (amongst other things) of the lunacy of A. B. of _____ in the county of Middlesex, Esq. It is found (amongst other things) that the said A. B., at the time of taking this inquisition, is a lunatic, and does not enjoy lucid intervals, so that he is not sufficient for the government of himself and his estate, as by the same inquisition (amongst other things) remaining on record may more fully appear; for the tuition of whom, and for the management of his estate, it belongs to us to provide. And whereas sufficient security is given to us on the behalf of the said A. B. by [*the names and additions of two sureties*], as in such cases hath been heretofore used. Know ye, that we, of our special grace, and of our certain knowledge and mere motion, have given, committed, and granted, and by these presents, for us, our heirs, and successors, do give, commit, and grant unto the said [*committee*], the custody of the person, tuition, regulation, and government of the said A. B., to have and to hold the aforesaid custody of the person, tuition, regulation, and government of the said A. B. from the date of these presents, so long as it shall please us during the continuance of the lunacy of the said A. B.

Know ye also, that we, of our like special grace, and of our own certain knowledge and mere motion, have given, committed, and granted, and by these presents, for us, our heirs and successors, do give, commit, and grant unto the said [*committee*], the custody, regulation, occupation, disposition, and receipt, as well of all manors, messuages, lands, tenements, houses, farms, revenues, services, and hereditaments, with the appurtenances, and of all rents, revenues, and profits thereof, which the aforesaid A. B. hath, or ought to have, in possession or reversion, or which, by any lawful ways and means, at any time or times hereafter, may or ought to come, descend, or accrue to the said A. B., or which any other or others hath or may have, to the use and profit of the said A. B., in the county of Middlesex aforesaid, or elsewhere, within our kingdom of Great Britain, as also the custody and government of all the goods and chattels, farms, stock of cattle, wealth, plate, debts, money, jewels, traffic, merchandizes, and other commodities and profits whatsoever to the said A. B. belonging or in any manner appertaining; and also the use and negotiation of the same to the use and behoof, profit and

(a) See *ante*, p. 163.

advantage, of the said A. B., and for the maintenance, sustenance, and support of the said A. B. and his family (if he hath any, or in time to come may have), and also for the maintenance, preservation, and repair of the messuages, lands, tenements, houses, farms, and the residue of the premises of the said A. B., To have and to hold the aforesaid custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods, and chattels of the said A. B., and all and singular other the premises above given, committed, and granted, or mentioned to be given, committed, and granted unto the said [committee], from the date of these presents, so long as it shall please us, during the continuance of the lunacy of the said A. B. : Provided always, that the said [committee], his executors and administrators, shall render a true account of the issues, revenues and profits of the manors, messuages, lands, tenements, and of the goods, chattels, and debts aforesaid, and of the profits thereof, and of the rest of the premises, once in every year at least, and as often as and whensoever to the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners of our Great Seal of Great Britain for the time being, shall seem meet ; and shall obey and fulfil all and every the order and orders of the Lord Chancellor, Lord Keeper, or Lords Commissioners of our Great Seal of Great Britain, made or hereafter to be made, any ways touching or concerning the premises, or any part thereof, or the issues or profits thereof, or any account or accounts thereof. And further, we will, and by these presents grant, that these our letters patent, or the enrolment of the same, shall be in and by all things good, firm, valid, and effectual in law, notwithstanding the not reciting, or not rightly reciting, any office or offices, inquisition or inquisitions, made of or concerning the premises or any of them, or any other thing, cause, or matter whatsoever to the contrary thereof in anywise notwithstanding. In testimony whereof, we have caused these our letters to be made patent. Witness ourself, at Westminster, the day of July, in the year of our reign.

Recognizance of Receiver.

A. B. of in the county of C. D. and E. F. of
 in the county of before our lady the Queen, in
 our Court of Chancery, personally appearing do acknowledge themselves and each and every of them doth acknowledge himself to owe to Francis Barlow, Esq. and Edward Winslow, Esq. the Masters in Lunacy the sum of £ of good and lawful money of Great Britain to be paid to the said Francis Barlow and Edward Winslow, or to one of them or to their or one of their executors or administrators, and the said A. B., C. D., and E. F. are willing and do agree and each and every of them is willing and doth agree for himself his heirs, executors and administrators, that the said sum

of £ shall be levied, recovered, and received of them and each and every of them, and each and every of their heirs, executors, or administrators. And of and from all and singular the manors, messuages, farms, lands, hereditaments, and premises, goods and chattels of them and each and every of them wheresoever the same shall or may be found. Witness our Sovereign Lady Victoria, by the grace of God of Great Britain and Ireland, Queen, defender of the faith at Westminster, this day of in the year of her reign and in the year of our Lord 184 .

Whereas by an order of the Lord High Chancellor of Great Britain, bearing date the day of made in the matter of G. H., Esq., a person of unsound mind, it is referred to the Masters in Lunacy jointly or severally to approve of and appoint a proper person to be receiver of the rents and profits of the said G. H.'s estate in the counties of and such person so to be appointed, first giving security to be allowed by the said Masters or Master duly and annually to account for what he shall so receive and pay the same as the said Lord Chancellor should direct. And whereas the said Master by his report bearing even date herewith hath approved of the said A. B. as a proper person to be receiver of the rents and profits of the said estates of the said C. D. and E. F. as his sureties, and hath allowed of this recognizance as a proper security. Now, the condition of this obligation is such that in case the said A. B. shall duly and annually account for all and every such sum and sums of money as he shall receive for rents and profits of the said estates and in case the said A. B. his heirs, executors, or administrators shall well and duly pay all and every such sum and sums of money as the said A. B. shall so receive as the said Lord Chancellor shall direct, then this recognizance is to be null and void or otherwise is to be and remain in full force and virtue.

Taken and acknowledged by the above named.

(Signed)

I allow this recognizance being the same that is mentioned in my report, bearing date the day of 184 .

(Signed)

Grant of the Custody of the Person of a Lunatic (a).

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to all to whom these our present letters shall come, greeting: Whereas, by a certain inquisition taken at the house of known by the name of situate at in the county of the day of in the year of our reign, by virtue of our commission in the nature of a writ *de*

(a) There is usually but one grant, as in the preceding form, *ante*, p. 851.

lunatico inquirendo in that behalf duly made and issued, to inquire (amongst other things) of the lunacy of A. B. of &c. It is found (amongst other things) that the said A. B. is, at the time of taking this inquisition, a lunatic, and enjoys lucid intervals, but so that he is not sufficient for the government of himself and his estate, as by the same inquisition (amongst other things) remaining on record may more fully appear, for the tuition of whom, and for the management of his estate, it belongs to us to provide. Know ye, that we, of our special grace and of our certain knowledge and mere motion, have given, committed, and granted, and, by these presents, for us, our heirs, and successors, do give, commit, and grant unto C. D., of &c., the custody of the person, tuition, regulation, and government of the said A. B., To have and to hold the aforesaid custody of the person, tuition, regulation, and government of the said A. B. from the date of these presents, so long as it shall please us during the lunacy of the said A. B., or during the continuance of the unsoundness of mind of the said A. B.: Provided always, that the aforesaid C. D., from time to time during the continuance of this grant, shall find, sustain, and keep the aforesaid A. B. with sufficient sustenance, clothing, diet, and other necessities of life according to his quality and condition, as is fitting in case of lunacy, and shall obey and fulfil all and every the order and orders of the Lord Chancellor of Great Britain, Lord Keeper, or Lords Commissioners of our Great Seal of Great Britain, made, or hereafter to be made, any ways touching or concerning the said A. B.: And further, we will, and by these presents grant, that these our letters patent, or the inrolment of the same, shall be in and by all things good, firm, valid, and effectual in law, notwithstanding the not reciting, or not rightly reciting, any office or offices, inquisition or inquisitions, made of or concerning the premises or any of them, or any other thing, cause, or matter whatsoever to the contrary thereof in anywise notwithstanding. In testimony whereof we have caused these our letters to be made patent. Witness ourself, at Westminster, the day of in the year of our reign.

Supersedeas of a Commission of Lunacy before any Grant to Committees (a).

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to all to whom these our present letters shall come, greeting: Whereas, by a certain inquisition taken at the house of at the sign of in the county of the 4th day of April, in the second year of our reign, by virtue of our commission in the nature of a writ *de lunatico inquirendo*, under our Great Seal of

(a) See affidavits for support of a petition in supersedeas, *post*, pp. 866—869.

patent. Witness ourself, at Westminster, the day of
in the year of our reign.

Supersedeas of a Commission of Lunacy after the Grant to a Committee (a).

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to all to whom these our present letters shall come, greeting: Whereas, by a certain inquisition taken at the house of situate in the county of and commonly called or known by the name of the day of in the year of our reign, by virtue of our commission in the nature of a writ *de lunatico inquirendo* in that behalf duly made and issued, to inquire (amongst other things) of the lunacy of A. B. It was found (amongst other things) that the said A. B. was, at the time of taking the said inquisition, a lunatic, and did not enjoy lucid intervals, so that he was not sufficient for the government of himself and his estate, as by the same inquisition (amongst other things) remaining on record may more fully appear for the tuition of whom and the management of his estate it belongs to us to provide. And whereas, by our letters patent, bearing date the day of in the first year of our

(a) See *ante*, pp. 279—283.

reign, we did give, commit, and grant unto C. D. the custody of the person, tuition, regulation, and government of the said A. B., To have and to hold the aforesaid custody of the person, tuition, regulation, and government of the said A. B., from the date thereof so long as it should please us during the lunacy of the said A. B. : And whereas, by our same letters patent, we did give, commit, and grant unto the said C. D. the custody, regulation, occupation, disposition, and receipt, as well of all manors, messuages, lands, tenements, houses, farms, revenues, services, and hereditaments, with the appurtenances, and of all rents, revenues, and profits thereof which the aforesaid A. B. had, or ought to have in possession or reversion, as also the custody and government of all the goods and chattels, farms, stock of cattle, wealth, plate, debts, money, jewels, traffic, merchandizes, and other commodities and profits whatsoever to the said A. B. belonging, or in any manner appertaining, and also the use and negotiation of the same, To have and to hold the aforesaid custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods, and chattels, and the rest of the premises of the said A. B. unto the said C. D., from the date thereof so long as it should please us during the lunacy of the said A. B., or to the uses and intents and under the provisoes in the same letters patent contained and specified, as by the same letters patent (amongst other things) remaining on record may more fully appear.

But because, upon full examination in our Court of Chancery, before us had in this behalf, it sufficiently appears to us that the said A. B. is recovered of his lunacy aforesaid, and is of sound mind, memory, and understanding, so that he is sufficient for the government of himself and his estate, and we in this behalf being willing that what is just and right be done to the said A. B. : Know ye therefore, that we, for certain causes and considerations us in this behalf especially moving, have revoked, determined, and superseded ; and, by these presents, do revoke, determine, and supersede the letters patent aforesaid, and the several grants thereby made to the said C. D. aforesaid, and all and singular in the same letters patent contained and specified, to all intents and purposes whatsoever, and all and singular the same we annul and make void by these presents ; and also the aforesaid C. D. from the custody, regulation, and government of the person of the said A. B., and from the custody, regulation, occupation, disposition, and receipt of the aforesaid manors, messuages, lands, tenements, houses, farms, goods and chattels of the said A. B., and all and singular other the premises, we fully discharge by these presents, requiring that the aforesaid C. D. shall by no means suffer any person or persons to intermeddle touching the said A. B. or his estate, for the future. And the said A. B. to the regimen and government of himself and all his we fully restore by these presents. In testimony whereof we have caused these our letters to be made patent. Witness ourself, at Westminster, the second day of
in the second year of our reign.

FORMS OF AFFIDAVITS.

AFFIDAVITS IN SUPPORT OF PETITIONS FOR COMMISSION OF LUNACY (a).

All affidavits are to be taken and expressed in the first person of the deponent. All copies of affidavits are to be ready for delivery within forty-eight hours after the same are bespoke. Any solicitor, party, or person, filing an affidavit not taken and expressed in the first person of the deponent, is not to be allowed the costs of preparing and filing such affidavit in any taxation of costs (b).

Affidavit of a Physician that he had examined a Party, and found him of unsound Mind, and the Grounds upon which his Opinion was founded.

In the matter of A. B., Esq., a supposed lunatic.

I, C. D. of &c., doctor of physic, make oath and say, that, by the desire of I visited the said A. B. at the house of Messrs. J. and K., situate at &c., on Tuesday the 20th instant, for the purpose of investigating the state of mind of the said A. B. And I say that, after sufficient personal examination of the said A. B., I am fully convinced that the mind of the said A. B. is now unsound, and that, by reason of such unsoundness, the said A. B. is wholly unfit for the management of himself and of his affairs. And I further say, that the unsound state of mind of the said A. B. was rendered manifest by a very great loss of memory and understanding, so as to render him incapable of discourse, or of directing and continuing his attention to any subject, by the frequent utterance of indistinct sounds, as if talking to himself, by want of all connection in the little he said, and by his addressing himself in whispers, with a variety of unintelligible gestures, in my presence, to two images placed over the chimney-piece for ornament. And I further say that, in the early part of the year 184 I also visited the said A. B. at his lodgings in , when, as I was informed and believe,

(a) These affidavits must be left at the office of the Secretary of Lunatics, with the petition for a commission: it can be scarcely necessary to observe that they must be adapted to the facts of each case.

(b) General Orders in Chancery, 8th May, 1845, Nos. 126—128.

the said A. B. was first put under restraint, in consequence of an attempt then recently made by the said A. B. to destroy himself.

C. D. { Sworn at the Public Office, Southampton Build-
 ings, Chancery Lane, London, this of
 184 Before me,
 [*A Master in Chancery.*]

Affidavit of another Physician as to the unsoundness of Mind of a Party.

In the matter of A. B., Esq., a supposed lunatic.

I, W. W. of &c., doctor of physic, make oath and say, that I did, on the 23rd day of March instant, visit the above-named A. B., who is now in a lunatic asylum kept by Messrs. J. and K., at &c., with the view of ascertaining his state of mind. And I further say, that, at my said visit, I took great pains to examine into the intellectual capacity of the said A. B., and, from such examination, I am firmly convinced that the said A. B. is a person of unsound mind, and totally incapable of governing himself, or of managing his affairs; and, as evidence of such unsoundness of mind on the part of the said A. B., I say that the said A. B. came into the room in which I waited for him, in a very hurried manner, and saluted me with apparent cordiality, but instantly drew himself up, turned aside his face, and continued to look with some suspicion at me as I walked up and down in the room; at my request, he at last sat down near me, and listened, apparently with attention, to my remarks and questions touching his family and present residence, but answered only now and then, and so indistinctly, that I could hardly catch a word of what he said; at last, putting his hands on my knees, and bringing his face close to mine with a peculiar grin, and with great rapidity of utterance, he said, he knew me to be Sir Edmund, and that he would tell me many secrets, he then relapsed into his thoughtful fit, and said no more. His expression of countenance has become very unmeaning, and strongly indicates a chronic absence of reason.

W. W.

Sworn &c.

Affirmation of the Keeper of a Lunatic Asylum, as to the Unsoundness of Mind of a Party confined there.

In the matter of A. B., Esq., a supposed lunatic.

I, J. K., of &c., surgeon, being one of the people commonly called Quakers, upon my solemn affirmation say, that in and prior to the year 1846, I kept an asylum for the reception of persons of unsound mind, and that on or about the 26th day of September, 1846, I, at

the desire of C. B., received into my care and custody the above-named A. B., as a person of unsound mind and understanding. And I further say, that the said A. B. hath ever since continued and now is at aforesaid, under the care and custody of me and my partner B. K. And I further say, that the conduct and discourse of the said A. B., from the time of his entering my establishment until the present period, has been wild, incoherent, and irrational: at times he will shout, halloo, and beat the bed violently with his fists during the greater part of the night, at other times he will remain for hours without uttering a syllable—or, if he speaks, his words are without sense or connection; in short, his whole behaviour has been that of an insane person. And I lastly say, that I saw the said A. B. on the morning of this present 22nd day of October, when the said A. B. was decidedly of unsound mind and understanding, and altogether unfit for the management of his affairs.

J. K.

Solemnly affirmed at &c.

Affidavit of a Surgeon as to Mental Imbecility, arising from old Age.

In the matter of C. D., a supposed lunatic.

I, J. S., of &c., in the county of Surrey, surgeon, make oath and say, that I have for ten years last past known and been acquainted with C. D. of in the said county, and been in the habit occasionally of attending him professionally; that I have visited him very lately, that I find his bodily health good, but his mental faculties impaired through extreme old age; that his mental imbecility has greatly increased within the last eight weeks, that I have conversed with the said C. D., who talks in a very incoherent manner, and without any connected subject, and is not capable of understanding what he is about, but is liable to be imposed upon by signing any instrument relating to the management of his property, or otherwise. And I further say that the said C. D. is now of the age of seventy-eight years or thereabouts, and, in my judgment and belief, now deprived of his reason and understanding, and is in noways capable, but wholly unfit, to manage himself or his affairs. And I further say, that I verily believe that the said C. D. will not again recover his mental faculties.

J. S. { Sworn at Guildford, in the county of Surrey, the
23rd day of July, 184 Before me, X. Y.

[*A Master Extraordinary in Chancery.*]

Affidavit of a Surgeon as to the Incompetency of a Party.

In the matter of N. N., Esq., a person of unsound mind. I, W. W., of &c., surgeon, make oath and say, that I am well

acquainted with the above-named N. N., of &c., and that I have been in the habit of visiting the said N. N. as his medical attendant, for years and upwards last past ; and that the said N. N. is now from his advanced age and infirmity of body, and imbecility of mind, totally incapable of transacting any business. And I further say, that the said N. N. hath been for the space of three years last past, and now is, of unsound mind, wholly deprived of reason, and is not competent to transact any pecuniary or other matter of business, nor to sign or execute with effect any deed or other written instrument. And I further say, that, as I have been informed and believe, the said N. N. is of the age of eighty years and upwards, and, for the space of three years last past, has been and now is labouring under severe bodily infirmity : and that by reason of the great age and infirmity of the said N. N., there is not, in my judgment and opinion any chance of the said N. N. ever recovering his faculties.

Sworn &c.

Affidavit of a Nephew residing with his Uncle, as to his Incapacity to manage his Affairs.

In the matter of C. D., a supposed lunatic.

I, E. S., of &c., make oath and say, that C. D., of &c., is the only brother of my late mother M. S., deceased : that the said C. D. is a widower and has no child, and that I and my brothers are the only children of the said M. S., the only sister of the said C. D., and are the only next of kin of the said C. D. And I further say, that I am acquainted with the estates and concerns of the said C. D. : and have, in the schedule to this my affidavit, set forth an account of the real estates of which the said C. D. is seised, and also of the persons who now occupy the same ; of the parishes and counties in which the same are situate ; and of the respective annual rents now received and made payable for the same ; the whole of which rents, according to my computation thereof, and which I verily believe to be true, amounts to the sum of £ , but which is subject to some deductions for land tax and quit rents : And I further say, that the said C. D. is possessed of no other real estates to my knowledge or belief than such as are contained in the said schedule so annexed to this my affidavit : And I further say, that the said C. D. is entitled to the sum of £ *per annum* Long Annuities, or thereabouts, and other personal estate : And I further say, that I have resided with my uncle, the said C. D., for the last six months, and I have lately applied to the tenants in possession of the real estates of the said C. D. for payment of the rents due from them respectively, but they have refused to pay the same, and several of the said tenants of the said C. D. have said, that they cannot, owing to the state of mind of the said C. D., be obliged to pay their rents to any person, or be turned out of the property

occupied by them respectively : And I further say, that one J. W. stands indebted to the said C. D. in the sum of £ and I have applied to him, the said J. W., for payment of the interest money due thereon, but he refuses to pay the same ; and it is not in my power to maintain and support the said C. D. without being paid some portion of the rents and interest monies now due and owing to him the said C. D.

The Schedule to which the foregoing affidavit refers, being a particular of the real estates of the said C. D.

A copyhold dwelling-house, garden, and land, situate at &c., let to H. D. at the yearly rent of £ .

A freehold, &c., &c.

E. S.

Sworn at &c. Before &c.

Affidavit of a Physician as to Unsoundness of Mind, arising from Delusion.

In the matter of E. F., Esq., a supposed lunatic.

I, G. H., of &c. doctor of physic, make oath and say, that for fourteen months now last past I have professionally attended the above-named E. F. ; and that, in my opinion, he, the said E. F., hath during the whole of that time been decidedly of unsound mind and wholly unfit for the management of himself and of his affairs. And I say that the unsoundness of the mind of the said E. F. is rendered manifest by a total inattention on the part of the said E. F. to the natural evacuations from the body, by an inability to assist himself, by a constant refusal of all food, unless he be fed by the persons in attendance upon him, by his declared conviction that poison is mixed with every kind of nourishment that is presented to him, by his talking perpetually to himself, or conversing with imaginary beings from which it is scarcely possible to divert him, by a total want of power to direct his attention steadily to any one subject for five minutes, by a supposition that he has fleets and armies at his command, to which he is very often giving his orders aloud, and by the frequent utterance of unintelligible and unconnected words and sentences. And I further say, that I professionally visited the said E. F. on Tuesday last, the 25th day of this present month of October, and that the said E. F. then continued in the same state of unsoundness of mind, whereby he is rendered totally insufficient for the management of himself and of his property.

G. H.

Sworn at &c.

Affidavit of Unsoundness of Mind arising from old Age, erroneous Perceptions, and Loss of Memory.

In the matter of the Rev. H. H., clerk, a supposed lunatic.

I, J. P., of &c., Clerk, make oath and say, that I am married to Ann, the daughter of the above-named H. H., of &c., and that I have been in the habit of seeing the said H. H. almost every day for the last eighteen months past, who, during that period, was living in my house for six months, and the latter twelve months in the adjoining house. And I further say, that, when the said H. H. first came to my house, I was much struck at finding the faculties of the said H. H. so much impaired, as I had not then seen the said H. H. for three years; and that during the last eighteen months his faculties have been gradually failing, and I now consider them altogether gone: and that the said H. H. is now perfectly childish, and unable to transact or undertake any business whatever; and as an instance and in support thereof, I say that the said H. H. frequently addresses me as a perfect stranger, and altogether forgets that I am married to his, the said H. H.'s daughter. And that the said H. H. has once or twice stated to me that he recollects me at Harrow School, where the said H. H. was at school, though I was not there, and there is upwards of fifty years difference in our ages. And I further say, that the said H. H. was formerly a Fellow of Trinity College, Cambridge, and, when at his meals he is drinking the common table beer of the family, he says, "this is very good ale, this is our audit ale, we get it from Trinity College, Cambridge." [*Other instances of a failure of understanding were stated*].

J. P.

Sworn at &c.

Affidavit of a Surgeon as to Unsoundness of Mind arising from Loss of Memory.

In the matter of the Rev. H. H., Clerk, a supposed lunatic.

I, R. F., of &c., licentiate of the Company of Apothecaries, and member of the Royal College of Surgeons, London, aged thirty-one years or thereabouts, make oath and say that I have known the Rev. H. H., of &c., for near two years last past, having during that time, attended him professionally, and having generally seen him twice or three times in the course of a week. And further that I believe the said H. H. to be labouring under great imbecility of mind, and that his memory and perception are so much impaired as to render him incapable of distinguishing between past and present events, or comprehending persons and things in an intellectual manner. And I further say, that I believe the said H. H. to be incapable of taking care of his person or estate.

K. F.

Sworn at &c.

Affidavit of the Value of the Property belonging to the Lunatic, to be made with the view of ascertaining the Amount of the Security to be required of the Committee of the Estate and his Sureties (a).

In the matter of A. B., a lunatic.

I, C. D., of &c., make oath and say, that I am well acquainted with the whole of the property of the above-named A. B. of a lunatic, and that his freehold and leasehold estates consist of the following particulars (that is to say) a freehold estate in the parishes of in the county of N., now in the occupation of as tenant thereof, at the yearly rent of £ And &c. [*set forth the particulars of the other estates*]. And I further say, that the personal estate of the said A. B. consists of the following particulars (that is to say) the sum of £ secured on mortgage of an estate at &c., by a certain indenture, dated &c., and made between &c. The household goods, plate, linen, china, books, and pictures in the house of the said A. B. situate in &c., which have been lately valued by a sworn appraiser at the sum of £ [*The particulars of the other personal property, according to the circumstances of each case, should be stated*]. And I further say, that the sum of £ 3 per cent. Consolidated Bank Annuities, lately standing in the name of the said A. B., and to which he is entitled, has, in pursuance of an order of the Lord Chancellor bearing date the day of been transferred into the name of the Accountant-General of the High Court of Chancery, in trust in the matter of the said A. B., a lunatic (b). And I further say, that, according to the best of my knowledge, information, and belief, the said A. B. is not possessed of, interested in, or entitled to, any other property, real or personal, either in possession, reversion, remainder, or expectancy, than such as is mentioned and described in the particulars hereinbefore set forth.

C. D.

Sworn at &c.

Affidavit of the Sufficiency of the two Persons proposed as Sureties in the Bond entered into by the Committee.

In the matter of A. B., a lunatic.

We, T. S., of &c., and G. S., of &c., each of us speaking for ourself only, severally make oath and say. And first, I, the said T. S. for myself say, that I am really and truly worth the sum of £ (c) of lawful money of Great Britain, over and besides what is sufficient to pay and discharge all my just debts. And I, the said G. S., for

(a) See *ante*, p. 191.

(b) The particulars of the property, which has been deposited or transferred for the purpose of reducing the amount of the security, should be stated.

(c) The sureties must together justify in a sum equal to the amount of the penalty of the bond.

myself say, that I am really and truly worth the sum of £
of like lawful money, over and besides what is sufficient to pay and
discharge all my just debts.

T. S. }
G. S. }

Sworn at &c.

*Affidavit of the Execution of the Bond by the Committee and his
Sureties.*

In Lunacy.

In the matter of a lunatic [*or person of unsound mind.*]
I, A. B., make oath and say, that C. D., of and I were
present and did see the bond hereunto annexed marked with the
letter A, and bearing date the day of 184 in the
penalty of pounds, duly signed, sealed, and delivered by
the therein-named as their respective act and deed to the
use of her present Majesty Queen Victoria, and that to the execu-
tion thereof by the said and respectively the said
C. D. and I did subscribe our respective names as witnesses thereto.

Sworn &c.

Before me &c.

Affidavit of the Service of a Copy of a Petition and Order.

In the matter of A. B., a person of unsound mind.

I, C. D., of Ely Place, in the county of Middlesex, clerk to E. F.
of the same place, gent., solicitor for C. B., widow and relict of
R. B., Esq., deceased (who was the eldest son and heir apparent
of the said A. B.) and mother and natural guardian of the
infant children of the said R. B., make oath and say, that I did, on
the 8th day of August instant, serve Mr. G. H., who acts as soli-
citor for J. K., the committee of the estate of the said A. B., with
a true copy of a petition of the said C. B. presented to the Lord
Chancellor in this matter, and of his Lordship's order thereon,
bearing date the 7th day of August inst. by delivering such copy
to, and leaving the same with, a clerk of the said G. H. at his
chambers in Lincoln's Inn, in the said county of Middlesex, and at
the same time shewing to such clerk the said original petition and
order. And I further say, that I did on the same day serve
Messrs. L., M., and N., who act as solicitors of the younger children
of the said A. B. with a true copy, &c. [*As before, and further
deposition as to service of copy of petition on the solicitor for the
wife of the lunatic.*]

C. D.

Sworn at &c.

Affidavit of Service of Notice of Day being appointed for hearing Petition.

In the matter of A. B., a lunatic.

I, C. D., of &c., Gent., make oath and say that I did on the 23rd day of June instant, personally serve E. F., of &c., one of the next of kin of the said lunatic, with a true copy of the notice hereunto annexed, marked (A).

C. D.

Sworn at &c.

(A).

In the matter, &c.

Take notice, that the Right Honourable the Lord High Chancellor of Great Britain has appointed Thursday, the 28th day of June, instant (being the first day of sitting after Trinity Term) for the hearing of the petition of G. H. and J. K. presented in this matter, a copy of which petition, together with a copy of his Lordship's order thereon, was served on you on the 19th day of April last. Dated this 22nd day of June, 1832.

Yours, &c.

C. D.

To E. F., one of the
next of kin of the
said lunatic. }

Solicitor for the petitioners,
Temple, London.

Affidavit of Service of Notice of Motion.

In the matter of C. D., a lunatic.

I, S. T., of &c., clerk to Messrs. E. & F. of the same place, solicitors to A. D., wife and committee of the person of the said lunatic, make oath and say, that I did on Monday the 12th day of July. inst., serve C. C., the solicitor to J. D., the committee of the estate of the said lunatic, with a notice in writing, purporting that the Lord Chancellor would be applied to on Wednesday then next, or as soon after as counsel could be heard, that the petition of the said A. D., preferred in this matter and heard before the Right Honourable on the 10th day of June last, might be again put in the paper of lunatic petitions, for the purpose of having the minutes of the order made upon the said petition rectified, by delivering a true copy of the said notice to a clerk of the said C. C. at his office, situate at &c.

S. T.

Sworn at &c.

AFFIDAVITS IN SUPPORT OF PETITIONS TO SUPERSEDE COMMISSIONS OF LUNACY (a).

Affidavit as to the Sanity of a Person late of unsound Mind.

In the matter of A. B., a person late of unsound mind.

I, C. B., of &c., Esquire, eldest brother of the above-named A. B., and one of the petitioners for the commission *de lunatico inquirendo* issued in this matter, make oath and say that, in the months of April and May last, I, at the request of the said A. B., and his committees, undertook to instruct a solicitor to take the necessary proceedings for superseding the said commission; and that, under my advice, the said A. B., at the end of the month of May last, came up to London from his residence at S., for the purpose of being examined, and was on two several occasions examined as to the state of his mind by Dr. J. H., Dr. H. L., and once by Dr. W. B.; and I further say that in consequence of my long and frequent absences from London, and of my having been much engaged since the month of June last, I found myself unable to give the necessary instructions to my solicitor, to commence proceedings for superseding the said commission, and that such my inability has been the only cause of the delay, since the month of June last, to present a petition for superseding the said commission, and that no relapse nor change in the state of mind of the said A. B. has happened between the month of April last and the present time, to my knowledge and belief. And I lastly say that in my judgment and belief the said A. B. now is, and has been for the space of two years last past, free from any mental delusion, and of sound mind and understanding, and competent to the management of himself and his property.

C. B.

Sworn &c., 8 December, 1830.

Affidavit by a Physician of having examined a Party, as to certain Delusions formerly entertained by him, and his Recovery.

In the matter of A. B., a person late of unsound mind.

I, J. H., of &c., doctor of physic, make oath and say, that, in the month of December, 1824, I did several times visit the above-named A. B. at H. house, and that I made an affidavit in support of a petition for a commission *de lunatico inquirendo*, and which commission was subsequently issued against the said A. B., in the month of January, 1825, and under which the said A. B. was then found a person of unsound mind, and incompetent

(a) See *ante*, pp. 279—288.

to the management of himself and his property, and to have been in the same state of mind from the 24th day of September, 1824. That I on the 29th day of May last, visited the said A. B., in consultation with H. L. of &c., doctor of physic, and that on the 31st day of May last, and also upon the 27th day of November now last, I visited the said A. B., in consultation with the said H. L., and with W. B. of &c., doctor of physic, and that I having previously refreshed my memory, with the particulars of the delusions of mind formerly entertained by the said A. B. by reading office copies of the four several affidavits filed in support of the said petition, and made by me by the said H. L., by Elizabeth the wife of the said A. B., and by H. P., did upon the said 29th and 31st days of May, and also upon the 27th day of November now last past, deliberately and minutely investigate the state of the mind of the said A. B., and more especially with reference to the delusions mentioned in the said four several affidavits, and did question the said A. B., particularly upon such delusions, and also upon such other subjects, as in my judgment were best suited to the purpose of ascertaining the soundness or unsoundness of the mind of the said A. B. And I say that from the investigation so made by me upon the three last-mentioned days, and from the answers given by the said A. B. to such questions as aforesaid, I have every reason to believe and do firmly believe that the delusions which formerly constituted the unsoundness of the mind of the said A. B. are now wholly removed, and that the said A. B. is conscious that such delusions did formerly exist in his mind, and is now convinced that they were delusions. And I finally say, that according to the best of my belief, judgment, and professional opinion, the said A. B. has recovered the use of his reason and intellectual powers, and may now be safely trusted with the direction of his person, and with the management of his affairs, and that he is now competent to the management of himself and his property.

J. H.

Sworn at, &c.

Affidavit by another Physician of having examined a Party and found him sane.

In the matter of A. B., a person late of unsonnd mind.

I, W. B., of &c., doctor of physic, make oath and say, that, on the 31st day of May last past, and on the 27th day of November last, I did, in company with Dr. J. H. and Dr. H. L., see the said A. B., for the purpose of ascertaining whether the said A. B. was or was not of sound mind; and I, previously to my interview with the said A. B., on the 27th day of November last, read office copies of the affidavit of the said G. H., and &c., which were filed in support of a petition for the commission *de lunatico inquirendo*, which was sued out against the said A. B. And I say that during both such interviews with the said A. B. I did very carefully inquire into the

state of mind of the said A. B. ; and that on such last-mentioned interview I did examine the said A. B., particularly in regard to the mental delusions mentioned in the said affidavits, and also on other subjects. And I say that from the result of such my inquiry and examination, I am fully satisfied that the mind of the said A. B. is entirely free from such delusions as aforesaid, and from every other delusion. And I further say, that, according to the best of my knowledge, judgment, and belief, the said A. B. is now of perfectly sound mind and understanding, and ought to have and may safely have free control over his own person and property.

W. B.

Sworn at, &c.

Affidavit of the Service of a Petition for superseding a Commission of Lunacy.

In the matter of A. B., a person late of unsound mind.

I, J. M., of &c., gentleman, make oath and say, that I did, on the 3rd day of December instant, serve Elizabeth, the wife of the said A. B., and C. B., of &c., Esq., who were the petitioners for the commission *de lunatico inquirendo* issued in this matter, with a petition of the said A. B., presented to the Lord High Chancellor of Great Britain, in this matter, praying that, &c. [*The prayer was set out*]. And I further say, that I so served the said E. B. and C. B. with the said petition, by delivering personally to each of them the said E. B. and C. B. a copy of such petition, and of the said Lord Chancellor's order thereon, whereby all parties concerned were to attend his Lordship on the matter of the said petition, on the next day of petitions, and thereof notice was to be given forthwith, and by shewing to each of them the said E. B. and C. B., at the said time of service, the original petition and order with which the said E. B. and C. B. were so served as aforesaid (a).

J. M.

Sworn, &c.

Affidavit of a Wife as to the Recovery of her Husband, late a Lunatic.

In the matter of E. F., late a lunatic.

I, C. F. of &c., wife of the above-named lunatic, make oath and say, that, on or about the 18th day of March, 1820, a commission in the nature of a writ *de lunatico inquirendo* was, on my petition issued, to inquire of the lunacy of the said E. F., who was thereupon on inquisition taken, found, and declared to be a lunatic. And I further say, that the said E. F. was, at the time of the said inquisition being taken, confined in a house licensed for the reception of

(a) There was a like affidavit of service of the petition and order on the committees of A. B.

insane persons, called . And I say that, in the month of August, 1823, the said E. F. having recovered his senses and become of sound mind, I procured his discharge from the said house, called , and he has ever since resided with this deponent. And I say that the said E. F. has at all times since his discharge from the said house called , conducted himself like a man of sound mind, memory, and understanding. And I say that the said E. F. has for the last two years conducted the business of a tobacconist; and I believe him to be now perfectly recovered, and fully capable of managing his affairs.

C. F.

Sworn, &c.

Affidavit as to the Sanity of a late Lunatic.

In the matter of E. F., late a lunatic.

I, C. S., of &c., chemist and druggist, make oath and say that I have known the above-named E. F. for the last three years or thereabouts. And I say, that, during the aforesaid period, I have been in the constant habit of seeing and conversing with the said [*lunatic*] a week not having very frequently elapsed, as I believe, in which I have not conversed with or seen him. And I say, that, during the period aforesaid, the said [*lunatic*] has at no time appeared or behaved himself in my presence as a person of unsound mind; but, on the contrary, the behaviour and conversation of the said [*lunatic*] has at all times during the period aforesaid been that of a man of sound mind and understanding. And I say, that the last time I saw the said [*lunatic*] was on or about the 12th day of February instant, when I freely conversed with him and he appeared to be and was, as I verily believe, of sound mind, memory, and understanding, and fully capable of managing himself and his affairs.

C. S.

Sworn &c.

FORMS OF CAVEATS (a).

CAVEAT against a commission of lunacy issuing against A. B., of &c. Esq., without notice to Messrs. C. & D., of Lincoln's Inn, &c. solicitors for the said A. B. Dated this day of 184 .
C. & D.

In the matter of A. B., a lunatic.

Caveat against any order appointing committees of the person and estate of the above-named A. B., without notice to E. F., of, &c., solicitor for C. B., one of the brothers and next of kin of the said A. B. Dated this day of 184 .

E. F.

In the matter of A. B., a person of unsound mind.

Caveat against any proceedings or orders in this matter, without notice to E. F., of &c., solicitor for H. B., the eldest son and heir-at-law of the above-named A. B. Dated this day of 184 .

FORMS OF PETITIONS IN LUNACY (*a*), AND ORDERS THEREON.

PETITIONS in Lunacy and Idiocy are intitled "In the matter of [*the person*] a lunatic," or "of unsound mind," or "an idiot," and if connected with a suit pending in Chancery, to which the lunatic or idiot is a party, the title of the cause should be also added.

The general orders as to drawing up orders in lunacy have been already stated (*b*).

Petitions in lunacy should be addressed to the person having the custody of the Great Seal, and being also intrusted by the King's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics. The forms of address vary according to circumstances, and are the following:—"To the Right Honourable the Lord High Chancellor of Great Britain;" "To the Right Honourable —, —, and —, Lords Commissioners for the custody of the Great Seal of the United Kingdom of Great Britain;" "To the Right Honourable —, Lord Keeper of the Great Seal of the United Kingdom of Great Britain."

(*a*) See *ante*, p. 117.

(*b*) *Ante*, p. 99, and n. (*l*) p. 100.

Petition for a Commission of Lunacy (a).

In the matter of A. A., a supposed lunatic.
To the Right Honourable the Lord High Chancellor of Great Britain.
The humble petition of B. B., of &c., Esq., the father of the
said A. A.

SHEWETH,

That the said A. A., of &c., the daughter of your petitioner, now is, and for ten years last past and upwards hath been so far deprived of her reason and understanding, that she is rendered altogether unfit and unable to govern herself, or to manage her affairs, as by the affidavits (b) hereunto annexed appears.

Your petitioner therefore most humbly prays, that your Lordship will be pleased to order that a commission in the nature of a writ *de lunatico inquirendo* may issue, to inquire of the lunacy of the said A. A., directed to such persons as your Lordship shall think fit.

And your petitioner will ever pray, &c.

Witness,

C. C. solicitor for the petitioner.

(Signed) B. B.

Order thereon.

Filing the affidavits annexed, let a commission in the nature of a writ *de lunatico inquirendo* issue, to inquire of the lunacy of the above named and let the same be directed to Francis Barlow and Edward Winslow, Esqrs., the Masters in Lunacy, or one of them, and let the same be executed in or near the place of abode of the said and let a good jury of the county and of the neighbourhood where the said resides, be returned, to inquire of lunacy.

Order made by the Lord Chancellor, on issuing a Commission of Lunacy, which was opposed, for the Production of the supposed Lunatic, and for her Examination by Physicians.

Upon reading and considering the said petition, and the evidence adduced in support thereof, and in opposition thereto, I do think fit, and hereby order, that a commission in the nature of a writ *de lunatico inquirendo* do issue, to inquire, &c., as above, And I do think fit, and hereby further order, that the person or persons in whose custody the said supposed lunatic now is, or may be at the time of the execution of the said commission, do produce her at that

(a) See *ante*, pp. 113, 117.

(b) See forms of affidavits in support of commissions of lunacy, *ante*, pp. 857—862.

time, or at any adjournment thereof, to be inspected and examined as often as there may be occasion, before the said Masters or either of them, and jury; and let due notice of the time and place of executing the said commission be given to Messrs. solicitors of who are to be at liberty to attend the same by counsel, if he shall think fit; but I do hereby declare such liberty to be given without prejudice to, and I do hereby reserve the consideration of, the costs of such appearance until after the execution of the said commission. And I do hereby further order, that in the meantime, and until the execution of the said commission, certain physicians, to be named by me, be at liberty to visit the said supposed lunatic, and have free access to her at her present place of abode, or at such other place or places as she may happen to be, either together or separately, and without the presence or interference of any person or persons whomsoever, as they or any or either of them may find necessary, and generally under such regulations, and at such time or times, and as often as they or any or either of them may think proper, for the purpose of examining the said supposed lunatic, and ascertaining the state of her mind, and her competency to manage her affairs. And I do think fit and hereby further order, that all and every person or persons in whose care, custody, or power, the said supposed lunatic may happen to be, do produce her to the said physicians, or to any or either of them, on such their or either of their visits; and that all and every such person or persons aforesaid, and all and every other person or persons whomsoever, be and they are hereby restrained from interfering with, or interrupting or causing to be interfered with or interrupted in any manner whatsoever, the said physicians, or any or either of them, on such their or either of their visits or examinations aforesaid.

Petition of the Daughter of a supposed Lunatic, and her Husband, for Liberty of Access, in order to enable them to oppose a Commission of Lunacy.

IN the matter of J. F., against whom a commission *de lunatico inquirendo* hath been awarded and issued.
To the Right Honourable, &c.

The humble petition of J. C., of &c., and Mary, his wife, late Mary F., spinster, the daughter of the above-named J. F.

SHEWETH,

That your petitioners have been informed, and verily believe, that a commission *de lunatico inquirendo* has been issued, directed to certain commissioners therein named, to inquire of the lunacy of the said J. F., and that the same is to be opened on Monday next, the 25th day of April instant, at ten o'clock in the forenoon, at the Albion Hotel, at M., aforesaid. That your petitioner, the said Mary C., has applied for, and been refused, permission to see the said J. F., who is now in confinement at or near, &c.

That your petitioners verily believe that they can produce competent witnesses to prove that the said J. F. is of sound mind, and able to manage his own affairs, but that your petitioners had not any funds of the said J. F., to enable them to carry on his defence on the inquiry to be instituted under the said commission.

That your petitioners have this day called in the aid of Messrs. H. and S., of &c., solicitors, to act on the behalf of the said J. F., and on the behalf of your petitioners, on the execution of the said commission; but, in consequence of the shortness of the notice, it will be totally impossible to conduct his defence on Monday next.

That the witnesses to be produced on behalf of the said J. F. will be numerous, and, as your petitioners believe, to the number of twenty and upwards, and that several of them reside at a distance from M. aforesaid.

That your petitioners are advised, that it will be necessary that the several witnesses to be produced should be examined by the solicitors, whom your petitioners have retained, previous to their being produced to give evidence upon the execution of the said commission, and that their examination should be furnished to the counsel, who will attend on the part of the said J. F.; and there is not time to do that before the opening of the said commission. That your petitioners verily believe, and have no doubt, that the said J. F. would concur in this application, and that he has a very considerable property; but, being kept in confinement, he has not been able to instruct any solicitor on his behalf.

That an application was made to your petitioners, or one of them, by the parties soliciting the said commission, some or one of them, to certify their wish that the said commission should issue, but that such application was rejected, on the ground, that your petitioners considered that the said J. F. was not a lunatic, and was competent to act in the management of his affairs.

That your petitioners disapprove of the issuing of the said commission, on the ground that the same is not necessary, and will be injurious and prejudicial to the said J. F. and his family and affairs, and that he is competent to manage his own affairs.

That several of the other children of the said J. F. have not joined in the application for the said commission.

That your petitioners are informed, and believe, that the rents and profits of the real estate of the said J. F. amount to 1,000*l.* and upwards, per annum, besides a large capital employed in his trade and business, and several considerable sums of money invested in divers mortgage securities.

That the information which it will be necessary for your petitioners to furnish to the said solicitors, will be of the acts done by the said J. F. during several years last past, and of his mental competency; and, that the investigation thereof will necessarily occupy a considerable time; and your petitioners verily believe, that justice cannot be done to the said J. F. without such investigation, and a proper time being allowed for the same.

That E. C., M. D., and M. B. R., members of the Royal College of Surgeons, both of M. aforesaid, severally certified in the month of November last, that the said J. F. was of sound mind in the months of August and September last, when they visited and examined him, for the purpose of ascertaining the state of his mind.

That your petitioners' solicitors have been refused access to the said J. F.; and that W. S., of &c., surgeon, under whose care the said J. F. is placed, has refused to permit any medical man to see the said J. F. on behalf of your petitioners.

Your petitioners, therefore, humbly pray your Lordship, that time may be given to conduct the defence of the said J. F., and to substantiate his sanity, and his ability to conduct and manage his own affairs; and, that your Lordship will be pleased, for that purpose, to order and direct that no proceedings be taken under the said commission, until such day as your Lordship shall appoint. And, that your Lordship will be further pleased to order and direct, that your petitioners and each of them, and the said Messrs. H. and G., as such solicitors as aforesaid, and proper medical advisers to be appointed by them, may have access to the said J. F., for the purpose of ascertaining and proving his sanity, under such restrictions as to your Lordship shall seem meet; and that the return of the said commission may be enlarged; and, that your petitioners may be permitted to conduct the defence of the said J. F., at the expense of his estate; and that your Lordship will be pleased to make such further order as to your Lordship shall seem meet.

And your petitioners shall ever pray, &c. (a).

Petition that supposed Lunatic may be produced at the Execution of a Commission of Lunacy.

In the matter of A. A., of &c., a supposed lunatic.
To the Right Honourable, &c.

The humble petition of, &c.

SHEWETH,

That in pursuance of an order made by your Lordship, on the 10th day of October, 1845, a commission, in the nature of a writ *de lunatico inquirendo*, was issued, directed to the Masters in Lunacy therein named, to inquire of the lunacy of the said A. A., the father of your petitioner.

That—one of the said Masters in the said commission named

(a) The petition was supported by an affidavit of the daughter, and an affidavit of service of the petition, and notice of motion on the solicitors for the commission, and another affidavit of one of the solicitors for the petitioners. The substance of the order made on the hearing of the petition is stated, *ante*, p. 126, *In re Fletcher*. The party was not found to be a lunatic.

has appointed Thursday, the day of instant, for opening the said commission; due notice whereof has been given to Messrs. C. and D., solicitors, as agents for the said A. A., and Mary, his wife; and the said Master has also issued his summons, directing the said A. A. to be produced before him on the execution of the said commission, a copy whereof has been served on the said Messrs. C. and D.

That your petitioner is apprehensive that the persons who have the custody of the said A. A., will not produce him to the Master and jury on the execution of the said commission, unless directed so to do by your Lordship's order.

Your petitioner, therefore, most humbly prays your Lordship, that any person or persons in whose custody or power the said A. A. may then happen to be, may be ordered to produce him at the execution of the commission of lunacy issued in this matter, or on any adjournment thereof, to be inspected and examined as often as there shall be occasion, before the Master and jury, at such seasonable times as they may require.

And your petitioner will ever pray, &c. (a).

Petition of the Father of a supposed Lunatic, that Affidavits filed may be produced on the Execution of a Commission.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

[*Statement of the order to issue commission of lunacy*].

That your petitioner is advised that it will be material to produce in evidence on the execution of the said commission, the several affidavits made in this matter, and which are now filed of record with your Lordship's Secretary of Lunatics.

Your petitioner, therefore, humbly prays your Lordship, that the proper officer, or his deputy, may be ordered to attend with the said affidavits, and to produce the same on the execution of the said commission, or any adjournment thereof.

And your petitioners shall ever pray, &c.

Order thereon.

Let the proper officer, or his deputy, attend with the said original affidavits, and produce the same at the execution of the said commission, as in the said petition mentioned.

(a) An order to this effect was made, *In re Holmes*, 13th December, 1827.

Petition of Person found to be of unsound Mind, to be allowed to traverse the Inquisition.

In the matter of A. A., a person found to be of unsound mind.

To the Right Honourable, &c.

The humble petition of the said A. A.

SHEWETH,

That by an order made in this matter, on the 19th day of November last, it was ordered, that a commission in the nature of a writ *de lunatico inquirendo* should issue, to inquire of the lunacy of your petitioner, the said A. A.

That by the inquisition taken on the execution of the said commission, on the 3rd day of December instant, it was found, that your petitioner, the said A. A., was a person of unsound mind; and that he had been in a state of unsoundness of mind from the 25th day of September, in the year of our Lord, 1845.

That your petitioner is advised that the said finding under the commission was contrary to the evidence adduced on the part of your petitioner.—*Instead of the last allegation may be inserted,* “That your petitioner is greatly aggrieved and prejudiced by the issuing of the said commission and the return of the said inquisition, and that your petitioner is of sound mind, and perfectly competent and sufficient for the government of himself and his property.”

Your petitioner, therefore, most humbly prays your Lordship, that he may be at liberty to traverse the aforesaid inquisition; and that your Lordship will stay in the mean time all further proceedings before the Masters in Lunacy in this matter; or, that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

Witness to the signing hereof by the said A. A.

B. B. of solicitor.

Order thereon.

7th Dec. 1845.—Let all parties concerned attend me in the matter of this petition on the next day of petitions, hereof give notice forthwith; and a *caveat* having been entered by C. D., let notice hereof be forthwith given to the said C. D. (a).

(a) As to traversing an inquisition of lunacy, see *ante*, pp. 143—162.

PLEADINGS IN A TRAVERSE OF AN INQUISITION
OF LUNACY (a).

Traverse of Inquisition.

In the Petty Bag Office in Chancery.

Pleas before our Lady the Queen, in her Chancery, at Westminster, in the county of Middlesex, of the Term of the Holy Trinity, in the year of the reign of our Sovereign Lady Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

Middlesex, (to wit),

By a certain inquisition indented, taken at the house of situate in the parish of St. Andrew, Holborn, in the said county, the day of in the year of the reign &c., and in the year of our Lord, 184 before [*the name of the commissioner*] Esquire, by virtue of her Majesty's commission in the nature of a writ *de lunatico inquirendo*, under the Great Seal of Great Britain, bearing date at Westminster, the day of then last past, to him the said Master directed and to the said inquisition annexed to inquire (amongst other things) of the lunacy of [*the supposed lunatic*], of, &c., Esq., upon the oaths of [*names of the jurors*], good and lawful men of the said county. It was found, that the said [*lunatic*] was, at the time of taking the said inquisition, a person of unsound mind, so that he was not sufficient for the government, &c., [*the words of the verdict*], as by the said inquisition, together with the said commission thereunto annexed, returned into the Chancery of our said lady the Queen, at Westminster, and there now remaining filed amongst the records of the said Court, may more fully appear.

And now at this day, that is to say, on the day of November, in this same Term, before our said lady the Queen, in her Chancery at Westminster, in the said county of Middlesex, cometh the said [*lunatic*] by C. D., his attorney, and prays oyer of the said commission, the return thereof and the inquisition thereupon taken, and the same being read and heard, the said [*lunatic*] complains, that, by colour of the premises, he is greatly vexed and disturbed, and that unjustly, because, protesting that the said commission and the return thereof, and inquisition thereupon taken, are insufficient in law, and unto which he need not, neither is he bound by the law of the land, to answer: For plea, nevertheless, in this behalf, the said [*lunatic*] saith, that he, the said [*lunatic*], at the time of taking the said inquisition, and always before, was, and from hence hitherto hath been, and now is, of sound mind and

(a) See *ante*, p. 145.

understanding, and sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels. Without this, that he, the said [*lunatic*], at the time of taking the said inquisition, or at any time before or after, was or now is a person of unsound mind, and not sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels, in manner and form as by the said inquisition is above found; and this the said [*lunatic*] is ready to verify; wherefore he prays judgment, and that the said commission, return, and inquisition thereupon taken, may be vacated and discharged; and that the hands of our said lady the Queen may be amoved, and that the said [*lunatic*] may be restored to the government of himself, and to the possession of all his manors, messuages, lands, tenements, goods, and chattels, and that he, under colour of the said inquisition, may be no further molested, but from the premises may be wholly discharged by this Court; and so forth.

Replication of the Attorney General.

In the Petty Bag Office. In Chancery.

Michaelmas Term, in the year of the reign
of Queen Victoria.

The King against [<i>The lunatic.</i>]	}	And Attorney General of our said lady the Queen, who prosecutes for our said lady the Queen in this behalf, being present here in Court, in his own proper person, for our said lady the Queen, says, that by reason of any thing by the said [<i>lunatic</i>] above in pleading alleged, the said commission, return and inquisition thereupon taken, ought not to be vacated or discharged, nor the hands of our said lady the Queen amoved, nor the said [<i>lunatic</i>] restored to the government of himself, or to the possession of his manors, messuages, lands, tenements, goods, and chattels: because, he says, that the said [<i>lunatic</i>] at the time of taking the said inquisition and before, was, and now is of unsound mind, so as not to be sufficient for the government of himself, his manors, messuages, lands, tenements, goods, and chattels, in manner and form as by the said inquisition above is laid. And this the said Attorney General, who prosecutes as aforesaid, prays may be inquired of by the country, &c. And the said [<i>lunatic</i>] doth the like. Therefore a day is given as well to the said Attorney General of our said lady the Queen, who prosecutes in this behalf for our said lady the Queen, as aforesaid, as to the said [<i>lunatic</i>] before our said lady the Queen, in eight days of the purification, wheresoever he shall then be in England, to do and receive what shall be just in the premises. And the sheriff of the county of Middlesex is commanded, that he cause to come before our said lady the Queen at that day, twelve good and lawful men of the body of his county, each of whom shall have ten pounds at least of lands, tenements, or rents by the year, by whom the truth of the matter in the premises may be better known and
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inquired into, and who to the said [*lunatic*] are in no ways related, to recognize upon their oaths the full truth of and concerning the premises aforesaid.

*Petition for Reference to a Master in Lunacy under
8 & 9 Vict. c. 100 (a).*

In the matter of A. B., a lunatic, under the statute
8 & 9 Vict. c. 100.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of C. D. of &c., &c.

SHEWETH,

That, &c.

[N. B. *The statements here will be an echo of the affidavits upon which the application is founded, shewing, amongst other things, who the lunatic is, where confined, (the party must have been in confinement at least a year), amount of property, that the party having lunatic's property, declines paying it any longer, in consequence of there being no one authorized to give proper receipt, and any fact as to lunatic's relations.*]

Your petitioner therefore humbly prays your Lordship to direct that one of the Masters in Lunacy shall personally examine the said A. B., and shall take such evidence and call for such information as to such Master shall seem necessary, to satisfy such Master whether the said A. B. is a lunatic, and that such Master shall report thereon. And your petitioner will ever pray, &c.

The Chancellor's fiat endorsed on the petition, 4th May 1846. Filing the affidavits annexed. Let one of the Masters in Lunacy personally examine the above-named A. B., and take such evidence and call for such information as to such Master shall seem necessary to satisfy such Master whether she or (he) is a lunatic or person of unsound mind and report thereon to me.

(Signed)

LYNDHURST, C.

Master's Report under preceding Order.

In the matter of A. B., a lunatic, under the statute
8 & 9 Vict. c. 100.

To the Right Honourable the Lord High Chancellor of Great Britain.

In pursuance of your Lordship's order in this matter, dated the 4th day of May, 1846, whereby it was directed that one of the Masters in Lunacy should personally examine the said A. B., and should take such evidence and call for such information as to such Master should seem necessary to satisfy him whether the said A. B.

is a lunatic or a person of unsound mind, and should report thereon to your Lordship. I have on this 12th day of May 1846, personally examined the said A. B. at the house of situate at in the county of and called or known by the name of and I have taken the evidence of and I have read the office copies of the affidavits of [*the affidavits filed in support of the petition.*] And I find that the said A. B. has been detained as a lunatic at the house of from the day of 184 , and that on that day she was removed to aforesaid [*present residence*] and where I find she has ever since been, and is now detained as a lunatic, and I am satisfied that the said A. B. is a lunatic, and not sufficient for the government of herself or her estate, all which I humbly certify to your Lordship (a).

INSTRUCTIONS FOR STATE OF FACTS UNDER THE GENERAL ORDERS IN LUNACY, AND EVIDENCE IN SUPPORT OF IT (b).

As to the Heirship and Next of Kin of the Lunatic.

To be proved either by *vivâ voce* evidence before the Master in Lunacy, or by affidavit, *vivâ voce* evidence being preferred.

If such evidence or affidavit of persons intimate with the family connexions will not clearly shew the pedigree, it must be traced by certificates from the registrars.

(Set forth the pedigree of the lunatic, shewing who are the heir-at-law and next of kin).

As to the Situation of the Lunatic.

To be proved by *vivâ voce* examination before the Master in Lunacy, or by affidavit.

(State what has been his rank and calling, and where he lived before he became lunatic, and since, also his present age, and where he now lives.)

(a) A petition must be presented for confirmation of the Master's report, and after such confirmation the Master will proceed to report as to the lunatic's heir-at-law, and next of kin, the appointment of a guardian and receiver, and as to the lunatic's property and maintenance under the general orders which have been already stated, *ante*, pp. 223—226.

(b) See *ante*, pp. 167, 168.

As to the Nature of the Lunacy.

The affidavit, or deposition of a medical man will shew this. The affidavits in support of the petition for the commission will probably shew it sufficiently.

(State generally the character of the mental disease, and whether the lunatic is dangerous or violent).

As to the most fit and proper Persons to be appointed Committees of the Person and Estate.

To be proved on evidence *vivâ voce*, (which is preferred), or by affidavit by two or more independent and trustworthy persons (persons of some station in life if it can be), shewing the eligibility of the persons proposed. It is desirable that the persons proposed as committees should attend the Master and state their willingness to discharge the duties and give the security if appointed; otherwise their written consent to act, and give the security required should be left with the Master.

(State who is or are proposed, whether the same or different persons for each office. The heir-at-law if desirous to act and well qualified has the preference as committee of the estate. Accounting parties are objectionable as committees of the estate. Some of the next of kin have a preference as committees of the person, but they must be shewn to be the most eligible persons. Set forth the grounds on which it is considered that the persons proposed are fit and proper; their station in life, relationship, if any, to the lunatic, or connexion with him, and (as to the committee of the estate) proximity of residence to the property, and (as to the committee of the person) proximity of residence to the lunatic, personal responsibility and character, and any circumstances from which it may be concluded that the party proposed will take good care, and promote as far as can be, the comfort of the lunatic; mention the age of the persons proposed).

As to the Lunatic's fortune at the time from which he shall have been found Lunatic, and at the time of this Enquiry, and what is the amount of income arising therefrom.

To be proved by *vivâ voce* evidence, or deposition of the solicitor to the lunatic, or some person intimate with his concerns.

The deeds or other documents to be produced if there be occasion

(If the property cannot be ascertained at present, this inquiry and the inquiry as to maintenance may be gone into after the appointment of committees).

(1st. Set forth what the *real* property *now is*, describing it exactly from the rental, names of farms, &c. in separate tenancies, their extent, and names of tenants, the rent of each tenancy, whether on lease or not, as to houses whether on repairing covenants, and what are the present arrears of rent due. This may be most conveniently shewn by a schedule, stating in the first column what is the property and where situate; in the second, the extent; in the third, the tenants' names; in the fourth, the rent; in the fifth, the arrears now due; in the sixth, any observations. If the estates of the lunatic are subject to any charges or incumbrances state what they are, to whom due, rate of interest, on what charged, &c.

2nd. Next set forth what is the *personal* property and how invested, specifying as to money on security, the sums, the rate of interest, to whom lent and the security; state also any other debts which are due to the lunatic. If the lunatic is liable to any specialty debts give particulars of these, and state what is believed to be the amount of the simple contract debts (if any) due from the lunatic. State any expectant interest of the lunatic in any property.

3rd. Then state *what was the property at the time from which he is found lunatic*, and if it varies from the property *now* give the same definite particulars as above noticed.

4th. Then state how the property and income from the time from which the lunacy is found to the present time has been dealt with; setting forth the payments out of the income for maintenance and other purposes up to the present time, and the monies received (this may be most conveniently given in another schedule).

5th. Then shew what is the *present* income : first, the gross income of the real estate ; second, the net income from such rents ; setting forth deductions for interest of charges, taxes, insurance and other outgoings, with an estimate of the annual expense of repairs, so as to give as accurate an estimate as can be of the actual net income. Then shew the income from the personal estate : mention any portion of the property not now producing income which may hereafter be productive of income, also any expectant sources of income).

As to the past and future Maintenance.

This may be shewn by *vivâ voce* evidence or affidavit of the person who has had the charge of the lunatic, or some person intimate with the circumstances.

(State where and under whose care the lunatic has from the *date of the inquisition and previous to that time* resided and *now* resides, what has been the establishment and what its expense, and out of what funds and by whom it has been met (this will probably have in part appeared in the statement as to the fortune), and what is now due for such expense and to whom, and out of what funds it is proposed to pay the same).

This may be verified by one of the persons proposed as committees, or any other person well qualified to form a judgment on the circumstances, and by the evidence of some medical person of experience and judgment in cases of this kind.

(Set forth in detail a scheme for the future maintenance, dividing the expenditure proposed under the different heads of housekeeping, attendants, clothing, medical attendance, &c. (to shew how the total sum proposed for maintenance is arrived at).

State facts shewing any peculiar habits of the lunatic, what comforts he is susceptible of enjoying, and what mode of treatment is best suited to his mental condition, so as to enable the Master to judge what residence, establishment, and mode of life will be most for his health, comfort, and advantage.

State under whose immediate care and superintendence it is proposed to place the lunatic).

N. B. It is the particular wish of the Masters to proceed with these inquiries *immediately* after the inquisition, whilst the members of the family and other persons intimate with the circumstances are at hand, so that the necessary evidence may be taken *vivâ voce*.

Petition to confirm the Master's in Lunacy Report made in pursuance of the Tenth General Order (a).

In the matter of A. B., a person of unsound mind.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of E. B., of in the parish of
in the county of the only sister and heiress-at-law and
only next of kin of the said lunatic.

SHEWETH,

That Esq., one of the Masters in Lunacy by his report made in this matter, and bearing date the day of certified that in pursuance of the general orders in lunacy, a state of facts and proposals of E. B., the sister and heiress-at-law and only next of kin as thereafter mentioned of the said A. B., had been laid before him, stating as therein set forth, and proposing herself as the committee of the person of the said A. B. and R. C., thereafter named as the committee of the estate of the said A. B., and further proposing that the sum of £ *per annum* should be allowed for the expenses of the maintenance and support of the said A. B., according to the scheme hereinafter set forth, and that such allowance should commence and be made from the day of

And in support of such state of facts and proposal, the following evidence had been produced and read before him (*viz.*), the office copies of the several affidavits of (*reference to affidavits, &c.*). And the said Master certified that he had been attended by the solicitor for the said E. B., and in his presence he had read and considered such state of facts and proposal and evidence and he found that by an inquisition taken before him on, &c., (*the inquisition*). *The Master's report and his separate finding on the following points is then set forth, viz., as to the heir-at-law and next of kin of the lunatic—as to the situation of the lunatic, and the nature of her lunacy—as to the committee'ship of the lunatic—as to the fortune and income of the lunatic, including the particulars of the lunatic's property, and whence derived—and as to the maintenance of the lunatic.*

Your petitioner therefore humbly prays your Lordship that the said report of Esq., bearing date the day of may be confirmed and that your petitioner may be appointed the committee of the person of her sister the said lunatic, and that the said R. C. may, upon giving the usual

security, be appointed the committee of her estate, and that the sum of £ *per annum*, to commence as from the day of may be paid to your petitioner by the said R. C. for the maintenance and support of the said lunatic, and for the time to come until further order out of the annual income of the said lunatic's fortune, and may be allowed to the said R. C. as such committee on passing his accounts before the Masters in Lunacy. And that it may be referred to one of the Taxing Masters of the High Court of Chancery, to tax your petitioner her reasonable and proper costs, charges, and expenses of suing out and prosecuting the commission in this matter, and incident thereto and consequent thereon, and of and incident to this application and consequent thereon, and that what the said Taxing Master shall certify to be the amount of your petitioner's said costs, charges, and expenses, may be paid to your petitioner's solicitor by the said R. C., as such committee as aforesaid, out of the income of the said lunatic's fortune, and may be allowed to him in passing his said accounts before the said Masters, and that the said R. C. may pass his accounts as such committee, before the said Masters, and pay the balances from time to time reported due from him into the Bank, in the name and with the privity of the Accountant General of the Court of Chancery, and that the balances when so paid may be invested in the name of the said Accountant General, in the purchase of Bank £3 *per cent.* Annuities in trust in this matter, and that the dividends to grow due thereon from time to time may be invested in like manner, or that your Lordship will make such further or other order as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order on last Petition confirming the Master's Report, &c.

In Lunacy. Saturday the day of in the
year of the reign of her Majesty Queen Victoria, and in the
year 184

In the matter of A. B., a person of unsound mind.

Whereas E. W., Esq., one of the Masters in Lunacy, by his report made in the said matter, and bearing date the day of 1845, found (amongst other things) that, &c. [*The Master's finding is set out*]. And whereas the said did on the day of instant, prefer her petition to me, stating as therein is stated, and praying that the said report of E. W., Esq., bearing date the day of 184 might be confirmed, and that the petitioner might be appointed the committee of the person, &c. [*The prayer of the petition is set out*].

Whereupon I ordered all parties concerned to attend me on the matter of the said petition on the then next day of petitions, whereof notice was to be given forthwith, and the matter of the said petition coming on to be heard before me on this day in the presence of _____ of counsel for the petitioner, E. B., the heiress-at-law and next of kin of the said A. B. Now upon hearing the said petition and the report of the said commissioner, bearing date the _____ day of _____ read and what was alleged by the counsel aforesaid (a), I do think fit, and hereby order that the said report be confirmed; and I do hereby further order that the custody of the person of the said A. B. be granted to the said petitioner E. B. for the time to come until further order; and that the care and management of the estate of the said A. B. be granted to R. C. for the time to come until further order, he, the said R. C., first giving such security as her Majesty's Attorney General shall approve of for answering the estate of the said A. B., and accounting for the rents, profits, and produce thereof, once in every year, or oftener if thereunto required, before the Masters in Lunacy, such security to be perfected on or before the _____ day of _____ now next ensuing, and in the mean time and until such security shall have been so perfected, the said R. C. is not to interfere in any manner in the affairs and concerns of the said A. B. as the committee of her estate, and in default of such security being perfected within the time aforesaid, or within some enlarged time, then I do hereby further order that it be again referred to the said Masters to approve, jointly or severally, of some fit and proper person or persons to be appointed the committee or committees of the estate of the said A. B., and after the said Masters or Master shall, in that case, have made their or his report, such further order shall be made as shall be just. And I do think fit, and hereby further order, that the balances which the said Masters shall, jointly or severally, certify to be due from the said R. C., on passing his accounts from time to time, as such committee as aforesaid be paid by him, within such time as the said Masters shall jointly or severally fix for that purpose, into the Bank of England, with the privity of the Accountant General of the Court of Chancery, to the credit of this matter. And the said Accountant General is to declare the trust thereof accordingly. And I do hereby further order that such balances, when so paid into the Bank, be from time to time as and when the same shall amount to a competent sum, laid out in the purchase of Bank £3 *per cent.* Annuities, in the name and with the privity of the said Accountant General to the credit of this matter, and he is to declare the trusts thereof accordingly

(a) The Orders in Lunacy as drawn up by the Secretary of Lunatics contains the above heading, and a statement of the Master's report and of the prayer of the petition, or such parts thereof respectively as shew upon what the Order is grounded.

subject to further order. And I do hereby further order, that the dividends from time to time to accrue on the Bank Annuities to be so purchased, and also all accumulations of dividends be as and when the same shall amount to a competent sum, laid out in the purchase of like Bank £3 *per cent.* Annuities, in the name and with the privity of the said Accountant General to the credit of this matter; and he is to declare the trust thereof accordingly subject to further order. And I do think fit, and hereby further order, that and the surviving trustees of the will of deceased, be at liberty to transfer the £ Bank £3 5s. *per cent.* Annuities, found by the said report to be now standing in their names and in the name of (deceased), in the books of that fund at the Bank, and to belong absolutely to the said A. B., into the name and with the privity of the said Accountant General, to the credit of this matter, and he is to declare the trust thereof accordingly, subject to further order. And I do hereby further order that the said and be also at liberty as such surviving trustees aforesaid, to pay the sum of £ in the said report mentioned, into the Bank with the privity of the said Accountant General to the credit of this matter, and he is to declare the trust thereof accordingly. And I do hereby further order that upon the said R. C. obtaining the grant of the care and management of the estate of the said A. B., he be at liberty to apply for and receive the sum of £ in the said report mentioned, and that he do pay the same when so received into the Bank with the privity of the said Accountant General to the credit of this matter, and he is to declare the trust thereof accordingly. And upon the receipt thereof, I do hereby further order that the said R. C. be at liberty in the name and on the behalf of the said A. B. to execute a proper release and discharge of the estate whereon the said sum of £ is charged, such release and discharge to be settled by the Masters in Lunacy or one of them, in case the parties differ about the same. And I do hereby further order that the said several sums of £ and £ making together the sum of £ when so paid into the Bank, be laid out in the purchase of Bank £3 *per cent.* Annuities, in the name and with the privity of the said Accountant General to the credit of this matter, and he is to declare the trust thereof accordingly, subject to further order. And I do hereby further order that the dividends from time to time to accrue on the Bank Annuities to be so purchased, and also the dividends from time to time to accrue on the said £ Bank £3 10s. *per cent.* annuities, when transferred to the credit of this matter as hereinbefore directed, and all accumulations of dividends be as and when the same shall amount to a competent sum, also laid out in the purchase of like Bank £3 *per cent.* Annuities in the name and with the privity of the said Accountant General to the credit of this matter, and he is to declare the trust thereof accordingly subject to further order; and I do hereby further order that the sum of £ *per annum* be allowed for the maintenance

and support of the said A. B. from the day of and for the time to come until further order, and the said R. C. is to be allowed the same on passing his accounts from time to time before the said Masters. And I do think fit and hereby further order that it be referred to the Taxing Master of the High Court of Chancery in rotation to tax and certify the reasonable and proper costs, charges, and expenses of the said petitioner, E. B., incurred in and about the suing out and prosecuting the commission of lunacy in this matter and consequent thereon and of all proceedings had subsequently thereto, including this application and consequent thereon. And I do hereby further order that such costs, charges, and expenses, when so taxed and certified, be paid by the said R. C., as such committee as aforesaid, out of the rents, profits, and produce of the estate of the said A. B., and he is to be allowed the amount which he shall so pay on passing his accounts from time to time before the said Masters, and for the purposes aforesaid the said Accountant General is to draw on the Bank according to the form prescribed by the act of Parliament and the general rules and orders in that case made and provided. [*Where the whole income is allowed for maintenance.*] And I do think fit and hereby further order, that the whole of the income of the said (*lunatic*) be allowed for his future maintenance and support until further order, such allowance to commence from the day of now last past, and the said petitioners (*the committees*) are to be allowed the same on passing their accounts before the said Masters."

Prayer of a Petition against the Confirmation of Master's Report.

[*The objections to be stated.*]

Your petitioners, therefore, humbly pray that the said report of the may not be confirmed; and that it may be referred to the said Master to review his said report; and that such directions may be given as to the person or persons to be appointed committee or committees of the person of the said lunatic, and in regard to the care and management of the said lunatic, as, under the circumstances hereinbefore mentioned, may seem just and proper, having regard to the comfort and happiness of the said lunatic; or that such further or other order may be made in respect of the matters aforesaid as shall be just and proper.

And your petitioners shall ever pray, &c. (a).

(a) See *ante*, p. 168.

Prayer of a Petition for reviewing the Master's Report.

[*The particular reasons to be stated.*]

Your petitioner therefore humbly prays your Lordship, that the said Master's report of the day of last may not be confirmed ; and that your petitioner, or one other of the lunatic's nephews, may be appointed one of the committees of the person of the said lunatic, with power to nominate, under the sanction of your Lordship, proper medical advisers in the neighbourhood of the lunatic ; and that it may be referred back to the said Master to review his said report, and also his former report of in respect of the several matters in your petitioner's former petition objected to ; and that your Lordship will be pleased, in the mean time, to give such orders and directions as may secure the health and comfort of the said lunatic, and the protection of his property. And your petitioner shall ever pray, &c.

Petition of the Co-heiress-at-law of a Lunatic for leave to carry in Proposals for the Appointment of Committees, and to have Notice of Proceedings, before the Master.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

[*Statement—The commission of lunacy and inquisition thereupon taken, and that a petition for appointment of committee of lunatic had been presented by another person.*]

That the said petition is set down to be heard before your Lordship on the next day of petitions.

That your petitioners A., B., and C., are the three daughters and only children of and as such your petitioners are, as they conceive and verily believe, the co-heiresses-at-law and three of the next of kin of the said lunatic.

That your petitioners are desirous to propose committees of the said lunatic's person and estate, and to have notice of all other proposals and proceedings which may take place before the said Master in the said matter.

Your petitioners, therefore, humbly pray your Lordship, that they may be allowed to carry in before the said Master proposals for the committees of the person and estate of the said lunatic, and that your petitioners may have notice of all other proposals and proceedings in this matter which may be taken in and carried on before and by the said Master ; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That the petitioners be at liberty to carry in proposals before the Master, to whom this matter stands referred, for the appointment of committees of the person and estate of the said lunatic, and to have notice of all other proposals to be carried into the said Master's office, and the proceedings to be had thereon for that purpose (a).

Petition of the Committee of the Estate to reduce the Security required of him on Part of the Lunatic's Estate being invested in the Name of the Accountant General.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

[*Statement of the inquisition.*]

That your petitioner was appointed committee of the estate of the said lunatic, and having given the usual security, obtained a grant of the custody of such estate.

That the sum for which security was required to be given amounted to the sum of £ but inasmuch as a very considerable portion of the then outstanding estate and effects of the said lunatic has been got in, and the proceeds thereof invested in the name of the Accountant General of the High Court of Chancery to the credit of this matter, your petitioner and his sureties are anxious to have the security reduced to a sum that will correspond with the present outstanding estate and effects, and to have their bond delivered up to be cancelled, upon their entering into a fresh security.

Your petitioner, therefore, most humbly prays your Lordship that the security of your petitioner and his sureties may be reduced to an amount corresponding with the present condition of the estate and effects of the lunatic, and that his Majesty's Attorney General may settle the amount in the usual way. And that after fresh security shall have been given by your petitioner, the bond of your petitioner and his present sureties may be delivered up to be cancelled; or that your Lordship would be pleased to make such further or other order in the premises as your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

(a) *In re Howell*, 8th August, 1829.

Order thereon.

That the security entered into by the petitioner and his sureties, bearing date the day of be reduced to an amount corresponding with the present condition of the estate and effects of the said lunatic. And further order that the said petitioner be at liberty to enter into fresh security to the approbation of her Majesty's Attorney General for answering the estate of the said lunatic, and accounting for the rents, issues, and profits thereof once in every year, or oftener if thereunto required, before Esq., the Master to whom this matter stands referred; and thereupon I do hereby further order, that the present recognizances entered into by the said petitioner, and and his sureties, bearing date, &c., be delivered up by the Masters in Lunacy to be vacated and cancelled.

Petition for Leave to deposit Securities in the Master's Office, for the Purpose of reducing the Amount of the Security required of the Committees.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

[*Statements—The inquisition—The reference to the Master to appoint committees—The confirmation of the Master's report appointing committees—And an order for enlarging time for perfecting security*].

That the said lunatic is possessed of or entitled to the sum of £ due from A. B., part thereof being secured by a mortgage and mortgage bond hereinafter referred to, and the residue thereof by the promissory note of the said A. B. hereinafter mentioned.

That your petitioners find it impossible to procure sureties for the full amount required by the usual practice, and in order that the amount of such security may be lessened, your petitioners are desirous of depositing with the Masters in Lunacy, a certain indenture [*the securities are set forth generally*].

Your petitioners, therefore, most humbly pray our Lordship, that they may be at liberty to deposit with the Masters in Lunacy, the indenture of mortgage before mentioned, [*a bond and note of hand*]; And that thereupon the several sums of money respectively secured thereby may be deducted by the proper officer from the amount for which your petitioners would otherwise have been required to give security; And that such security be reduced accordingly; And that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

Petition of Person who had been approved as Committee for the appointment of another with a salary.

To the Right Hon. the Lord High Chancellor of Great Britain.

In the matter of A. B. a person of unsound mind.

The humble petition of C. B., the wife of the above-named lunatic.

SHEWETH,

That a commission having issued to inquire of the lunacy of the above-named A. B., he was by inquisition duly taken thereon, on the 23rd day of January, 1844, found to be of unsound mind and unable to take care of himself and his property, and to have been in the same state of unsoundness of mind from the 11th day of April, 1843.

That F. B., Esq., the Master in Lunacy, to whom the matter was referred by his report bearing date the 23rd day of January, 1844, among other things approved of your petitioner as the most fit and proper person to be appointed the committee of the person and estate of the said lunatic.

That by an order made by your Lordship, bearing date the 16th day of March, 1844, the said report was confirmed, and a grant was ordered to be made to your petitioner of the care and custody of the person and estate of the said A. B., upon your petitioner giving security as in the said order mentioned.

That since the date of the said order your petitioner has been using her best endeavours to obtain the two sureties necessary to complete the requisite security, but by reason of being a perfect stranger in England, having been born and spent the former part of her life in the West Indies, the number of her friends living within the jurisdiction of this honourable Court is very small, and all to whom she has applied have refused to act as such sureties with the exception of H. S. of &c. Esquire.

That under the circumstances aforesaid your petitioner will be prevented from acting as such committee.

That the aforesaid H. S. is willing to act as such committee of the person and estate of the said lunatic, and to find the requisite security, but that he will not in such capacity unless he be allowed a reasonable salary for his trouble.

That your petitioner hath been informed, and believes that it will not be possible to find any one willing to act as such committee unless he have a reasonable salary allowed him for his trouble.

Your petitioner therefore humbly prays your Lordship that it may be referred to the Master in Lunacy to whom this matter stands referred, to approve of some other person as committee of the person and estate of the said lunatic in the place and stead of your petitioner, and to allow a reasonable salary to such person for his trouble, or that your Lordship will be pleased to make such other or further order as your Lordship may seem meet.

And your petitioner will ever pray, &c.

Order thereon, Counsel appearing for the Petitioner, and for the heir-at-law and next of kin of the Lunatic.

Now upon hearing the said petition read, and what was alleged by the counsel aforesaid, and it appearing to me by the said petition, that the said C. B. is unable to give the security required by the order in this matter bearing date the 16th day of March, 1844, for answering the estate of the said A. B., and accounting for the rents, profits, and produce thereof, as committee of such estate. I do think fit and hereby order that it be referred to the Masters in Lunacy, to approve jointly or severally of some fit and proper person to be the committee of the estate of the said A. B. in the place of the said C. B. ; and I do hereby further order, that it be also referred to the said Masters, to inquire and certify jointly or severally what salary will be fit and proper under the circumstances of the case, to be paid to such committee for his care and pains in the management of the estate of the said A. B., and in getting in and receiving the rents, profits, and produce thereof. And after the said Masters shall jointly or severally have made their or his report, such further order shall be made as shall be just (a).

Order appointing a Committee ad interim (b) of the person made on petition of Lunatic's wife.

I do think fit and do hereby appoint E. S. the wife of the said I. S., to be committee *ad interim*, of the person of the said I. S. until further order. And I do hereby further order that it be referred to the Masters in Lunacy, to inquire and certify jointly or severally, who is or are the most fit and proper person or persons to be appointed committee or committees of the estate of the said I. S., with liberty to the said Masters if they shall jointly or severally consider it necessary or advisable to approve of a committee or committees *ad interim* of such estate. And the said petitioner and the said and are to be at liberty to attend the said Masters upon the said inquiry, and to lay such proposals before them relative thereto as they respectively may be advised. And I do hereby further order that the sum of £ per quarter of a year, commencing from the day of be until further order paid to the said E. S. ; out of the estate of the said I. S., for the maintenance and support of herself and the said I. S., the said petitioner undertaking by her counsel to account for the expenditure of such quarterly sums in such manner as I may hereafter direct.

(a) *In re Thomas*, 22nd December, 1845.

(b) *Ante*, p. 175.

Order appointing a Committee ad interim of person and estate.

Now, &c., order to confirm Master's report. And I do hereby appoint the said A. B. the committee *ad interim*, of the person and estate of the said (*lunatic*), upon his giving such security as the Masters in Lunacy shall jointly or severally approve, and the circumstances of the case may require for answering the estate of the said (*lunatic*), and for accounting for the rents, profits, and produce thereof, until a permanent committee or committees thereof be appointed, or until further order, such security to be perfected on or before the day of next. And I do hereby further order that it be referred to the said Masters to settle and take such security accordingly.

Order to transfer Stock into the name of Accountant General.

And I hereby further order that the whole of the present annual income of the said (*lunatic*) be allowed for his maintenance and support, from the day of for the time to come until further order. And I do hereby further order that the dividends from time to time to accrue due in respect of the said (*stock*), when transferred to the credit of this matter, be as and when the same shall become due and payable, paid by the said Accountant General to the said A. B. as such committee *ad interim* as aforesaid, provided the said Masters or either of them shall have certified the security aforesaid, to have been perfected by him, and the said A. B. is to apply the amount so received in the maintenance, support, and clothing of the said (*lunatic*).

Petition for the appointment of a Receiver of the Lunatic's Estate.

In the matter of A. B.

To the Right Honourable, &c.

The humble petition of C. D. of, &c.

SH EWETH,

That, &c., (*statements relative to the lunatic's property, order appointing the petitioner committee on giving the usual security. Master's report on the proposal to appoint a receiver, finding that the committee could not obtain the necessary security, and that several sums of money belonging to the lunatic were outstanding.*)

And that the Master found that it was absolutely necessary for the purpose of protecting the estate and effects of the said J. N., that some person should be forthwith appointed to collect and get in the debts due and owing to the estate. And he was of opinion that it was necessary and proper, and for the benefit and advantage of the said J. M. and his estate, that a receiver thereof should be forthwith appointed. That your petitioner is unable, for the reasons stated in the said Master's report of the day of

to undertake the management of the works and estate of the said J. M., and to find such security by the said order directed to be given by him.

Your petitioner therefore humbly prays your Lordship that the said Master's report of the day of may be confirmed, and that it may be referred to the said Master to approve of a fit and proper person to be receiver of the said lunatic's real and personal estate with the usual salary, as also to appoint the same; and that it may be referred to the said Master to settle the amount of such security to be given by such receiver. And that the said order of the day of appointing your petitioner committee of the estate of the said lunatic may be varied, and that your petitioner may be continued the committee of the estate of the said lunatic on being discharged from giving the security by the said order directed, and on your petitioner not interfering in any manner in the concerns of the said J. M. as committee of such estate. And that your Lordship will make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order on last Petition to confirm the Master's Report.

And I do hereby further order, that so much of the order made in this matter bearing date the day of as directs the petitioner to give such security as her Majesty's Attorney General should approve of for answering the estate of the said lunatic, and for accounting for the same as committee thereof, be discharged. And I do hereby further order, that the care and management of the estate of the said lunatic be granted to the said petitioner, J. M., without his giving the usual security, and that the said J. M. be and he is hereby restrained from receiving any part of the property and effects of the said lunatic until further order. And I do hereby further order, that it be referred to the Masters in Lunacy, who are, jointly or severally, to appoint a fit and proper person to be receiver of the rents, profits, and produce of the said lunatic's estate, and to allow him a reasonable salary for his care and pains therein, such receiver first giving security to be allowed by the said Masters, and taken before a Master extraordinary in the country, if there shall be occasion duly and annually to account for what he shall receive, and pay the same as I shall direct. And I do hereby further order, that the tenants of the said lunatic's estates do attorn and pay their rents in arrear and growing rents to such receiver, who is to be at liberty to let and set the said estates from time to time with the approbation of the said Masters, or either of them, as there shall be occasion. And I do hereby further order, that the balances which the said Masters

shall, jointly or severally from time to time, certify to be due from such receiver on passing his accounts, be paid by him within such time as the Masters shall jointly or severally fix for that purpose into the Bank, with the privity of the Accountant General of the Court of Chancery to the credit of this matter, and he is to declare the trust thereof accordingly. And I do hereby further order, that the said balances when so paid into the Bank be from time to time, as and when the same shall amount to a competent sum, laid out in the purchase of Bank £3 *per cent.* Annuities in the name and with the privity of the said Accountant General to the credit of this matter. And he is to declare the trust thereof accordingly, subject to further order. And I do hereby further order that the dividends from time to time to accrue on the said Bank Annuities when so purchased, and all accumulations of dividends be also from time to time, as and when the same shall amount to a competent sum, laid out in the purchase of like Bank £3 *per cent.* Annuities in the name and with the privity of the said Accountant General to the credit of this matter; and he is to declare the trusts thereof accordingly, subject to further order, and for the purposes aforesaid, &c.

Petition of Wife of a Lunatic, for an increased Sum to be allowed for the Maintenance of the Lunatic's Family.

In the matter, &c.

To the Right Honourable, &c.

The humble petition of C. A., the wife of the said lunatic.

SHEWETH,

[*Statements—The reference to the Master as to maintenance and the amount of the fortune of the lunatic, and the Master's report thereon—And that, since the date of the report, certain additions therein mentioned had been made to the personal estate of the lunatic.*]

That, since the date of the said Master's report, your petitioner has been put to very heavy expenses in maintaining and finishing the education of her two younger daughters, both of whom are now grown up, and that circumstances have changed in regard to the state of the said lunatic's family, so that the present allowance is not adequate to their comfortable maintenance and support.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to the Masters in Lunacy, or either of them, to inquire and state to your Lordship, whether any and what addition should be made to the 500*l.* *per annum* already allowed to your petitioner for the maintenance and support of the said lunatic's family, regard being had to the increase of the property of the said lunatic since that period, and to the present state and situation of his family.

And your petitioner will ever pray, &c.

Petition of the Heir-at-Law and next of Kin of a Lunatic, for an Increase in the Sums allowed for keeping up the Lunatic's Establishment, and for his Maintenance.

In the matter of A. A., a lunatic.

To the Right Honourable, &c.

The humble petition of N. A., the only brother, and one of the next of kin of the said lunatic, and also his heir-at-law, and H. A., and Charlotte his wife, the only sister and the other next of kin of the said lunatic.

SHEWETH,

[*The preliminary proceedings were here set forth, including the former order for maintenance, &c.*]

That your petitioners are sole next of kin of the said lunatic, and will be entitled to the whole of his personal estate and savings, in case he shall not become of sound mind. And that your petitioner, N. A., on the death and failure of issue of his brother, will become entitled to all the estates now possessed by the lunatic, in the same manner as the said lunatic is now entitled thereto.

That your petitioner, N. A., was married on the 26th day of February, 1827, and had a son born on the 10th day of January last.

That your petitioner, N. A., has been subjected to much heavier expenses in the care and maintenance of the house at H., and in the care of the furniture and other valuable property therein, than were contemplated at the date of the said order of the day of

184 particularly in the number of menial servants necessary to keep so large a house in a proper state; in fuel, owing to the extent and dampness of the house; in maintaining the gardens and pleasure grounds; in the increase of poor rates and other parochial taxes; and in the continuance of servants who had been in the family many years, who could not with propriety be discharged, though their services were not efficient; and that the general expenses of supporting the house have considerably exceeded the calculations of your petitioner.

That your petitioner H. A., and his wife, have also been subjected to heavier expenses in providing what appeared requisite for the comfort and happiness of the lunatic, than were contemplated at the date of the said order of the 184 in providing a commodious house for him in a retired healthy situation, with extensive gardens and pleasure grounds attached thereto; in medical attendance; in giving high wages to confidential servants; in the keeping of a carriage and horses for the use of the lunatic; in procuring what might tend to his amusement, and generally in his establishment, the lunatic being capable of many enjoyments and comforts, and his mind being irritable and very much disturbed if his present mode of living do not in some degree accord with what he was accustomed to prior to his affliction, and when residing with his deceased brother in the family house at H.

That the private fortunes of your petitioners are small, and such as do not permit them, unaided, to live in the manner in which they have been brought up, and as according to their situation in society they are entitled to do.

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to the Masters in Lunacy, or either of them, to inquire and certify whether it would be fit and proper, having regard to the comfort of the said lunatic, and the circumstances of your petitioners, that the allowance of £ *per annum*, now made to the said N. A., out of the income of the said estate of the said lunatic, for the purpose of keeping up the family residence, should be increased, and the allowance of £ now made to the said H. A. and his wife, out of the same income, for the charge and care of the said lunatic, and maintaining his establishment, should also be increased; and that, upon the Master's report being made, such order may be made in regard to an increased allowance to your petitioners as may be just and proper.

And your petitioners will ever pray, &c.

Order thereon.

The inquiry directed was "whether it will be fit and proper, having regard to the comfort of the said lunatic, and to his circumstances and estate, and to the circumstances of the petitioners, that the allowance of £ *per annum*, already made to the petitioner, N. A., out of the income of the said lunatic's estates, for the purpose of keeping up the family residence at H., should be increased to any and what amount, and from what period the same should commence; and also having a like regard to the said lunatic's comfort and circumstances, whether the allowance of £ already made to the petitioner, H. A. and C. his wife, the committees of the person of the said lunatic, for their charge and care of the said lunatic, and maintaining his establishment, should also be increased to any and what amount, and from what time the same should commence."

Petition to confirm the Master's Report, made in pursuance of the last Order, which stated the preliminary Proceedings and his Report.

Your petitioners, therefore, humbly pray your Lordship, that the said Master's said report may be absolutely confirmed, and that the receiver of the rents and profits of the estates of the said lunatic may be ordered to pay to your petitioner, N. A., out of the said rents and profits, the sum of £ *per annum*, from the 28th day of February last, and for the time to come, in lieu of the said

sum of £ *per annum*, for the purposes of residing in and keeping up the family mansion-house of the said lunatic, at H., in the county of L., by equal quarterly payments. And that the said receiver may likewise be ordered to pay to your petitioner, H. A., and C., his wife, out of the said rents and profits, the sum of £ *per annum*, from the said 28th day of February last, and for the time to come, in lieu of the said sum of £ *per annum*, for the maintenance of the said lunatic, by equal quarterly payments ; and that what the said receiver shall so pay as aforesaid may be allowed to him in passing his accounts before the said Master. And that it may be referred to, &c., *for taxation and payment of costs.*

Petition that Stock and Money belonging to a Lunatic may be transferred, and paid into the Name of the Accountant General of the Court of Chancery.

In the matter of a person of unsound mind.
To the Right Honourable, &c.
The humble petition of [*Residuary legatees named in*
a will].

SHIEWETH,

[*Statements—The Commission of Lunacy and the Inquisition—The reference to the Master to appoint Committees—The Master's Report, and the confirmation of it—And a Will under which the Lunatic⁷ was entitled to a share of the residue of personal estate.*]

That the said _____ as such executors and trustees of the will of the said [*testator*], are desirous for their indemnity, and your petitioners, as well for the security of the estate of the said [*lunatic*], as to lessen the security to be given by the said _____ as such committee of the estate of the said [*lunatic*], are also desirous, that the said sum of £ _____ *3l. per cent.* Reduced Bank Annuities, and the said sum of £ _____ Bank Stock, should respectively be transferred by the said [*executors*] into the name of the Accountant General of the Court of Chancery, in trust in this matter; and that the several sums of £ _____ and £ _____ making together the sum of £ _____ should be paid by them into the Bank, in the name of the said Accountant General, in trust in this matter.

That your petitioners are satisfied that the several sums above-mentioned are the correct and proper sums to which the said [lunatic] is entitled under the will of all your petitioners (except your petitioner to whom the sum of £ was by the said will given), having had similar sums transferred to and for the benefit of your same petitioners.

Your petitioners, therefore, humbly pray your Lordship, that the said [*executors*] may be directed forthwith to transfer into the name of the Accountant General of the Court of Chancery, in trust in this matter, the said sum of £ 3*l.* per cent.
Reduced Annuities, and the said sum of £ Bank Stock;

and that the said [*executors*] may also be directed to pay into the Bank, in the name of the said Accountant General, in trust in this matter, the sum of £ cash in their hands belonging to the said [*lunatic*]. And that it may be referred to the Taxing Master in rotation of the High Court of Chancery, to tax your petitioners and the said [*committee*] their costs, charges, and expenses, incident and relating to this application, and consequent thereon, and to include the same in the costs directed to be taxed under the before stated order of and that he may also tax the costs, charges, and expenses of the said [*executors*] of this application, and of the transfers and payment hereby prayed to be made; and that such last-mentioned costs, when taxed, be paid out of the cash which shall be then standing in the name of the said Accountant General, in trust in this matter, to the solicitor for the said [*executors*]; or, that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That the said [*executors and trustees*] do forthwith transfer into the name and with the privity of the Accountant General of the Court of Chancery, in trust in this matter, £ Bank *3l. per cent.* Reduced Annuities, and £ Bank Stock, respectively standing in their names, in the books of those funds, at the Bank of England, to which the said [*lunatic*] is entitled, as mentioned in the said petition; and the Accountant General is to declare the trust thereof accordingly, subject to further order. And I do think fit, and hereby further order, that the said [*executors*] do forthwith pay into the said Bank, in the name and with the privity of the said Accountant General, in trust in this matter, the sum of £ cash, remaining in their hands, belonging to the said [*lunatic*], as in the said petition also mentioned; and the said Accountant General is to declare the trust thereof accordingly. [*Further order to tax costs*]. And I do hereby further order, that the amount which the said Master shall certify to be due for such last-mentioned costs, charges, and expenses, when taxed, be paid by the said Accountant General out of any cash which may be remaining on the credit of this matter at the date of the said Master's certificate of such respective costs, charges, and expenses, to the solicitor of the said [*executors*]; and let due notice, &c. [*to next of kin*]. And for the purposes aforesaid, the said Accountant General is to draw on the Bank according to the form prescribed by the Act of Parliament, made for the relief of the suitors of the Court of Chancery, and the general rules and orders of the said Court in that case made and provided; and let this order be drawn up and entered by the registrar of the said Court.

Petition of the Committee of the Estate of a Lunatic, for a Reference to the Master, to inquire as to the Application of certain Sums of Money by the Committees of the Person.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That A. and B., two of the younger children of the said lunatic, have been duly appointed committees of the person of the said lunatic, and your petitioner committee of his estates.

[*The order of reference as to maintenance, the Master's report and orders, and other circumstances, shewing that sums had been advanced for maintenance and other purposes, were stated.*]

That in or about the month of June or July, 184 or sometime within or about twelve months from the time the said A. and B. were appointed such committees of the person of the said lunatic as aforesaid, the said A. at one time, and in one sum, received and retained (out of the said sum allowed for the annual maintenance and support of the said lunatic as aforesaid), for her, the said A.'s, own exclusive and private use, a sum of 500*l.*, or thereabouts; and that the said A. has also, from time to time (out of the said sum so allowed for the maintenance and support of the said lunatic), received and retained for her own exclusive and private use, several other sums of 50*l.* each, and upwards.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to the Masters in Lunacy or either of them, to inquire and report to this honourable Court, at what periods, and in what manner and amounts, the said sum of 500*l.*, so allowed as an outfit, has been expended; and, whether the same has been applied in accordance with, and for the purposes specified in the said proposal and statement of the said [*committees of the person,*] for which the same was allowed as aforesaid, or how otherwise.

And whether any and which of the said charges and items, delivered in by the said [*committees of the person*] in support of their said statement or particular of such expenditure, ought to be allowed as coming out of the said sum of 500*l.* allowed as an outfit for the purposes aforesaid; and, whether all, or any, and which of such charges and items, ought not be considered as forming part of the current annual expenses, for which the said sum of £ was allowed for the maintenance and support of the said lunatic as aforesaid. And that it may also be referred to the said Masters or either of them, to inquire and report to this honourable Court, whether the said [*committees of the person*], or one and which of them, have or has not received and retained, at some and what period or periods, for his, her, or their own private and exclusive use, the said sums of £ and £ or how much or what part

thereof, or any other and what sums, out of the sums so allowed for the maintenance and support of the said lunatic; and that the costs, charges, and expenses of your petitioner in this petition, and incident thereto and to the said inquiry, may be taxed by the said Master; and that the same, when so taxed, may be retained by your petitioner out of the said lunatic's estate; or, that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

Petition of the Committees for confirming the Master's Report, stating his Opinion, that a Bill filed against the Lunatic for compelling the Renewal of a Lease should be resisted.

In the matter, &c., a lunatic.

To the Right Honourable, &c.

The humble petition of, &c., the committees of the estate of the above-named lunatic.

SHEWETH,

That by an order made in this matter on the petition of your petitioners, bearing date the 3rd day of April, 184 it was (amongst other things), &c.

[*Recital of reference to the Master, to inquire what proceedings should be taken for obtaining possession of property comprised in a lease, and for resisting a suit which had been instituted for compelling a renewal.*]

That in pursuance of the said order, the said Master made his report, &c.

[*There was a statement of the lease, of a bill filed for compelling a renewal of it, and a state of facts, shewing upon what grounds it was resisted by the committees, and the Master's opinion that it ought so to be.*]

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report, dated, &c., may be confirmed; and that your petitioners, as the committees of the estate of the said lunatic, may be permitted to resist the claim of the said [*plaintiff*] for a renewal of the said lease, as stated in the said report; and that your petitioners may be permitted to file their answer to the said bill of the said [*plaintiff*], and to defend the said suit, in order that the opinion of the Court may be taken upon the rights and obligations of all parties interested in the matters stated and set forth in the said bill of complaint of the said [*plaintiff*]; and that it may be referred to the Taxing Master in rotation of the High Court of Chancery, to tax your petitioners, and the next of kin of the said lunatic, their costs, charges, and expenses not already taxed and allowed in this matter, and of the proceedings in resisting

the claim of the said [*plaintiff*] and of this application, and consequent thereon; and that what the said Master shall certify to be the amount thereof respectively, may be raised by the Accountant General of the Court of Chancery, by a sale of a sufficient part of the £ 3*l.* per cent. Consolidated Annuities, standing in his name, on the credit of this matter, and paid to the solicitors of the respective parties; or that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Prayer of Petition of Committee for Reference to inquire as to the Expediency of instituting Proceedings in Equity.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*Statement of the facts, shewing how the claim arose.*]

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to the Masters in Lunacy, to inquire and certify, whether it will be fit and proper, and for the benefit of the said lunatic and his estate, that any and what proceedings should be instituted to ascertain the rights of the said lunatic, and of all other the parties interested in the premises; and that it may be ordered at whose expense such proceedings, if any, shall be carried on, and out of what fund the costs to be occasioned thereby shall be paid; or, &c. (a).

Petition of the Committees of the Estate of the Lunatic, and of the Committees of the Person, for a Reference to the Master to inquire if for the Benefit of Lunatic's Estate that Terms of Compromise should be accepted.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*statements of the inquisition under a commission of lunacy, and the circumstances respecting a debt due to the lunatic's estate.*]

That your petitioners have caused inquiries to be made as to the circumstances of the said [*debtor*], for the purpose of ascertaining if any sum of money could be obtained from him, in addition to the sum offered by but it turns out that the said [*debtor*]

(a) Order made according to the prayer of the petition.

is not, and has not for several years been in a situation to contribute any thing for that purpose: and that in the year 184 he became insolvent, and then compounded with such of his creditors as would accept composition, and still continues in an insolvent state, having lost a situation which he had held in the house of Messrs. and being now supported, together with other members of his family, almost entirely by the charity of his friends.

That the said have received some sums of money on account of the said lunatic's property in

That your petitioners are of opinion, that the same, together with any sums of money which may be recovered from the said by way of compromise or otherwise, would be employed most for the benefit of the said lunatic, if the same were invested in the purchase of Government life annuities.

Your petitioners, therefore, most humbly pray your Lordship, that it may be referred to the Masters in Lunacy, or either of them, to inquire and state to the Court, whether it will be fit and proper and for the benefit of the said lunatic's estate, that the terms of compromise mentioned and contained in the said agreement of the of March, should be accepted in full satisfaction of all claims and demands against the said [*debtor and surety in bond*] in respect of the said bond to your petitioners, and of the dealings of the said in relation to the affairs of the said lunatic; and that the said Master may inquire into the circumstances of the said [*debtor*], and whether, if the said compromise be accepted, the said [*debtor and surety*] ought to be released from all claims on them respectively in relation to the affairs of the said lunatic's estate, and the said bond to be cancelled.

And your petitioners will ever pray, &c.

Order thereon.

The reference was to inquire and certify whether it will be fit and proper, and for the benefit of the said lunatic's estate, that the terms of compromise mentioned and contained in the agreement of the day of 184 stated in the said petition, should be accepted in full satisfaction of all claims and demands of the said lunatic, or of the petitioners, as the committees of his estate, in respect of the bond entered into by [*the debtor and surety*], with the said committees, as mentioned in the said petition, and of the dealings of the said in relation to the affairs of the said lunatic. Further order, to inquire into the circumstances of the said [*debtor*], and certify whether he and the said [*surety*] ought to be released from all claims on them respectively, in relation to the affairs of the said lunatic, and the aforesaid bond cancelled; and after the said Master

shall have made his report, such further order shall be made as shall be just. And let due notice, &c. [*persons entitled to distributive shares.*]

Petition of Committees that a Transcript of an Inquisition of Lunacy may be transmitted to the Chancery in Ireland, in pursuance of the Statute of 11 Geo. 4 & 1 Wm. 4, c. 65, s. 41 (a).

In the matter of a lunatic.

To the Right Honourable, &c.

The humble petition, &c., the joint committees of the estate of the said lunatic.

SHEWETH,

[*Statements—of the inquisition of lunacy taken in England, and the appointment of committees.*]

That the said lunatic hath, by the decease of his father become entitled in possession to estates in the counties of Wicklow and Dublin, in the kingdom of Ireland, referred to in the said Master's report of, &c.: And it is therefore necessary that a committee or committees should be appointed by the said Lord Chancellor of Ireland for the care and management of the said estates.

Your petitioners, therefore, humbly pray, that your Lordship will be pleased to order the proper officer for that purpose at the Petty Bag Office to transmit a transcript of the record of the said inquisition, taken on the day of (under which the said [*lunatic*] was found a lunatic), to the Chancery in Ireland, to be thereupon entered of record, and be as of record there in the manner and for the purposes mentioned in an act of Parliament made and passed in the first year of the reign of his late Majesty King William the Fourth, intituled "An Act for consolidating and amending the Laws relating to Property belonging to Infants, Females Covert, Idiots, Lunatics, and Persons of unsound Mind."

And your petitioners, &c.

Petition of the Committee of the Estate of a Lunatic to refer Matter to Master for Scandal and Impertinence.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That W. B., by means of J. C., his attorney, on the 19th day of January, 1830, presented his petition to your Lordship in this

matter, thereby praying (amongst other things) that your petitioner, as the committee of the estate of the said [*lunatic*], might pay the said W. B. the sum of £ and that certain costs therein mentioned might be taxed and paid to J. C., as solicitor of the said W. B., out of the said lunatic's estates.

That the said J. C., as the solicitor of the said W. B., did, on the 20th March instant, make and file an affidavit in support of the said petition.

That the said affidavit is, as your petitioner is advised and believes, impertinent, and, in many parts thereof, scandalous as well as impertinent.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to Esq., one of the Masters of the High Court of Chancery, to whom this matter is referred, to look into the said affidavit, and to certify whether the same be altogether or in any and what particulars impertinent, and in any and what particulars scandalous and impertinent; or that your Lordship will be pleased to make such order therein as may be just.

And your petitioner shall ever pray, &c. (*a*).

Petition of the Committee of the Estate for a Reference to the Master to inquire as to the Propriety of advancing a Sum of Money belonging to a Lunatic on Mortgage of real Estates (b).

In the matter of Esq., a lunatic.

To the Right Honourable, &c.

The humble petition of Esq., the committee of the estate of the above-named [*lunatic*].

SHEWETH,

That there is now standing in the name of the Accountant General of the High Court of Chancery, to the credit of this matter, the several sums of stock and cash following, (that is to say), in Bank 3*l. per cent.* Consolidated Annuities £ &c., &c.

That the lunatic is possessed of other personal estate to a considerable amount, and entitled to several freehold estates in the counties of and

That [*mortgagor*] has applied to and requested your petitioner to lend him the sum of £ out of the personal estate of the said [*lunatic*] on a mortgage of certain freehold estates, situate in several parishes in the county of of the clear annual value of £ at the least, whereof the said [*mortgagor*] is seised in fee simple, free from incumbrances, and has proposed to pay to

(*a*) An order was made according to the prayer of the petition. *In re Frank*, 24th Marsh, 1831; see *ante*, p. 555.

(*b*) See *ante*, pp. 272, 273.

your petitioner 4*l. per cent. per annum* for the same, so long as the said sum of £ shall remain on such security as aforesaid, and provided the general rate of interest shall be considered as 4*l. per cent.* And in case the general rate of legal interest shall be increased to, and considered as more than 4*l. per cent.* then and in such case the said [*mortgagor*] proposed to pay to your petitioner interest for the said sum of £ according to such increased rate. And the said [*mortgagor*] has also proposed, in addition to discharging the usual costs of your petitioner as mortgagee, agreeably to the accustomed practice in such cases, to pay the sum of 150*l.* on account of and towards the costs of your petitioner of this application and consequent thereon in relation to the aforesaid mortgage.

That £ and £ were, on the 28th day of February, 1823, laid out by the then Accountant General of the Court of Chancery, pursuant to orders made in this matter for that purpose, in the purchase of £ Bank 3*l. per cent.* Annuities, and such sum forms part of the said sum of £ like Annuities, now standing to the credit of this matter as hereinbefore is mentioned.

That Bank 3*l. per cent.* Annuities were, at the time of such purchase, at 73½*l.*, and are now at 85½*l.*

That the sum of £ Bank 3*l. per cent.* Annuities, part of the said sum of £ like Annuities, would, if now sold and converted into cash, and calculating the price of the funds at 85½*l.*, produce the sum of £ cash, being the sum of £ more than the said sum of £ which was originally invested in the purchase of the said £ Bank 3*l. per cent.* Annuities.

That the said sum of £ Bank 3*l. per cent.* Annuities now yields the annual income of 2,106*l.*, and if the same were converted into cash, and such cash placed out at interest at 4*l. per cent.*, the annual income thereof would be full 2,400*l.*, being an annual increase of 294*l.* beyond the present income.

That your petitioner is of opinion that it is beneficial to the lunatic and his estate, that the said sum of £ should be advanced on mortgage in manner aforesaid, provided the title to the estates proposed to be mortgaged is perfect, and the estates themselves a sufficient security for the sum proposed to be advanced upon them.

That the two sons of the lunatic approve of the proposal of the said [*mortgagor*], subject to an investigation as to the goodness of the title, and the sufficiency of the security.

That it has been represented to your petitioner, who has confidence in the representation, that the interest on the said [*loan*] will be regularly and punctually paid.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to Esq., the Master to whom this matter stands referred, to inquire and certify whether it

will be fit and proper, and for the benefit of the lunatic and his estate, that the sum of [loan], or any other and what sum should be advanced out of the personal estate of the lunatic to the [mortgagor], upon mortgage of certain estates belonging to the said [mortgagor], situate in the county of or of any other and what estates in any other and what county, and at what rate of interest, and upon what other terms; and that in making the said inquiry, the said Master may have regard to the titles and value of the said estates, and may certify to your Lordship whether good titles can be made thereto. And in case the said Master shall be of opinion that the said sum of £ [loan] should be advanced on mortgage as aforesaid, then your petitioner most humbly prays your Lordship, that the said Master may state out of what fund belonging to the lunatic the said sum of £ [loan] should be raised; and that the said Master may approve and settle the proper securities from the said [mortgagor] to your petitioners, for securing the repayment thereof with interest; or that your Lordship will be pleased to make such further or other order, as to your Lordship may seem meet.

And your petitioner will ever pray, &c.

Order thereon.

[*Upon hearing Counsel for the petitioner and the lunatic's next of kin, who consented.*] That it be referred to the Master to whom this matter stands referred, to inquire and certify whether it will be fit and proper and for the benefit of the said lunatic and his estate, that £ [proposed loan], in one or more sum or sums or any other and what sum or sums of money, should be advanced out of the personal estate of the said lunatic to [mortgagor], upon a mortgage or mortgages of certain estates belonging to the said [mortgagor], situate in the county of or of any other and what estates belonging to the said [mortgagor] in any other and what county, and if so, at what rate of interest, and upon what other terms and conditions; and in making the said inquiry, the said Master is to have due regard to the titles and value of the said estates, which he is to inquire into and certify. And I do hereby further order, that in case the said Master shall be of opinion that the said [loan], in one or more sum or sums or any other sum or sums of money as aforesaid, should be advanced on mortgage of the said [mortgagor] as aforesaid, then he is to inquire and certify out of what fund or funds belonging to the said lunatic the said sum [loan], or any other sum or sums as aforesaid, should be raised. And I do hereby further order, that the said Master be at liberty to state any special circumstances relative to the aforesaid inquiries he

may think fit; and after the said Master shall have made his report, such further order shall be made as shall be just. [*Notice to next of kin*] (a).

*Petition of the Committee for Confirmation of the Master's Report
as to the Loan, in pursuance of the last stated Order.*

In the matter of Esq., a lunatic.

To the Right Honourable, &c.
The humble petition, &c.

SHEWETH,

That, by an order made in this matter, upon the petition of your petitioner, and bearing date the 6th day of June, 1832, your Lordship was pleased to order that it should be referred, &c. [*the last order is stated.*]

That the said Master, in pursuance of the said order, made his report, bearing date the 12th day of July, 1832; and thereby certified, that he had been attended by the solicitor for the petitioner and for being the only four children of the said lunatic, and the only persons who would be entitled to distributive shares of the lunatic's estate in case he was then dead intestate, and had proceeded on the said reference; for which purpose proposals had been laid before him, on behalf of the said petitioner, whereby, &c. [*Affidavits of land surveyors as to the value of the property proposed as a security were stated; and the Master reported that a good title could be made to such estates, and in favour of the proposed loan.*]

Your petitioner, therefore, most humbly prays your Lordship, that the said Master's said report may be absolutely confirmed, and that it may be referred back to the said Master to settle and approve of proper mortgages, assignments, and other assurances or securities, for securing to your petitioner, as committee of the estate of the said [*lunatic*], the repayment of the said several sums of £ and £ [*the loan*], with interest thereon respectively, at *5l. per cent. per annum*, reducible to *4l. per cent. per annum*, on punctual payment. And that your Lordship will be pleased to order the Accountant General of the Court of Chancery to sell so much of the £ Bank *3l. per cent.* Annuities, now standing in his name in trust in this matter, as will be sufficient to raise the sum of £ [*loan*]; and upon the due execution of the said mortgages, assignments and other assurances and securities by all proper parties, such execution to be certified by the said Master, your petitioner most humbly prays, that your Lordship will be pleased to order the said Accountant General to pay the said several sums of £ and £ [*the loan*], to the

(a) *In re Craven*, 6th June, 1832.

[*mortgagor.*] And your Lordship will be pleased to order, that in lieu of the present arrangement for payment of the annual allowance for the maintenance of the said lunatic and his family [*direction as to payment of maintenance, &c.*] And that your Lordship will be pleased to refer it to the said Master to ascertain and settle the costs, charges, and expenses of your petitioner, and of the heir-at-law and next of kin of the said lunatic, in and about the loan to the said [*mortgagor*], and the proceedings in the said report mentioned and preparatory thereto, and of this application and consequent thereon, and in reference thereto, and that the said Master may certify what proportion of the said costs, charges, and expenses, ought to be borne by the said [*mortgagor*] as mortgagor; and that your petitioner may be at liberty to pay the remainder of such costs, charges, and expenses, after deducting the sum of 150*l.*, being the sum agreed to be paid by the said [*mortgagor*], on account of the application to your Lordship, and the proceedings consequent thereon, over and above the mortgagor's usual costs, to the solicitor of your petitioner, and be allowed the amount in his next account; or, that your Lordship will be pleased to make such further or other order in the premises as to your Lordship may seem meet.

And your petitioner will ever pray, &c.

An order was made upon the last petition, upon hearing Counsel for the petitioner and the next of kin of the lunatic, to confirm the Master's report, to refer it to the Master to settle and approve the proper securities for securing to the committee of the estate the repayment of the [*loan*], with interest thereon, at and after the rate of 5*l. per cent. per annum*; but so long as the general rate of interest payable upon money advanced upon mortgage, should continue to be less than 5*l. per cent. per annum*, the committee was to be at liberty to receive such rate of interest as should be payable for the time being on money secured on mortgage, provided such interest so to be received should not be at any time less than 4*l. per cent. per annum*, and should be punctually paid by half-yearly instalments. On the execution of the securities for the loan, which was to be certified by the Master, the Accountant General was ordered to sell sufficient stock for raising the loan; and directions were given as to the future payment of maintenance-money, and the taxation of the costs of the mortgage, as prayed by the petition (*a*).

(*a*) *In re Craven*, 13th July, 1832.

Petition of Committee of the Estate to be discharged from the Office.

In the matter of A. B. a lunatic.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of R. C., &c.

SHEWETH,

That [*Statement shewing the proceedings as to the appointment of R. C. as committee.*]

That your petitioner resides at a distance of sixty-five miles from where one of the estates of the said lunatic is situate, and about thirty miles from where another of the said lunatic's properties is also situate. That the lunatic resides near which is about thirty miles distant from your petitioner's residence, at near . And that although the said T. W. lives with the said lunatic as the committee of his person, yet your petitioner has been accustomed to direct every arrangement connected with the custody and comfort of the said lunatic. That your petitioner has from time to time duly passed the accounts of all his receipts, payments, and allowances, as such committee as aforesaid. That your petitioner has now attained the age of seventy-one years, having fulfilled the duties of a committee of the said lunatic's estate for a period of forty years and upwards, and finding that the infirmities of old age incapacitate him for discharging such duties properly, he is desirous of being relieved therefrom. That your petitioner's son, J. C., is willing to become the committee of the said lunatic's estate, in the place and stead of your petitioner, if approved of by this Honourable Court.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to the Masters in Lunacy, to take a final account of all your petitioner's receipts, payments, and allowances, for and on account of the said lunatic, A. B., and his estate, as the committee thereof from the foot of his last account passed in the said matter. And that thereupon, and on your petitioner's duly accounting for any balance that may be found due from him on the taking of such final account, that your petitioner may be discharged; and his own and his sureties, bonds and recognizances vacated and delivered up, and that a bill for the revocation of the grant of the custody of the said lunatic's estate may pass the Great Seal. And that it may be referred to the said Masters to inquire and certify who is or are the most fit and proper person or persons to be appointed committee or committees of the estate of the said lunatic, in the place and stead of your petitioner. And that it may be referred to the Taxing Master in rotation of this Honourable Court, to tax all parties their costs, and the costs, charges and expenses, of and incident to this application and consequent thereon, and to certify the total amount thereof; and that such costs when taxed, may be paid by

your petitioner to the solicitors of the respective parties, and allowed to him out of the said lunatic's estate on the passing of his final account as aforesaid. Or, that your Lordship will make such further or other order in the premises as to your Lordship shall seem meet, and the circumstances of this case may require.

And your petitioner will ever pray, &c.

Now upon hearing the said petition read, and what was alleged by the counsel aforesaid (*i. e.* for the petitioner and heir-at-law and next of kin of the lunatic). I do think fit and hereby order that it be referred to the Masters in Lunacy, to inquire and certify jointly or severally, who is or are the most fit and proper person or persons to be appointed committee or committees of the estate of the said lunatic, in the place of the said petitioner, R. C. And I do reserve all further directions until after the said Masters or Master shall have made their or his report, when such further order shall be made as shall be just.

Petition of Committee of the Estate, to be discharged from the Committeeship, and to pass his final Account.]

In the matter of, &c.

To the Right Honourable, &c.

The humble petition, &c.

SH EWETH,

That [*Statement of the inquisition, appointment of the committee, and grant of the custody.*]

That your petitioner is now desirous, on account of his advanced age and bodily infirmities [*or any other reason,*] of being discharged from being such committee.

That, since the passing of your petitioner's last account, he has received and paid divers sums of money on account of the said lunatic and his estate.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to the Masters in Lunacy, to take and pass your petitioner's accounts of receipts and payments in respect of the said lunatic's estate, from the foot of your petitioner's last account, and therein to make unto your petitioner all just allowances, and particularly an allowance of the costs of your petitioner, and of the next of kin and heir-at-law of the said lunatic, of this application and incident thereto, and of passing the said accounts; and that, upon paying into Court the balance (if any), which may be then found due from your petitioner, he may be discharged from being such committee, and that the recognizance entered into by your petitioner and his sureties may be vacated, and all other proper and necessary directions given. And also, that your Lordship will be pleased to order

that it may be referred to the said Master, to approve of and appoint another fit and proper person to be committee of the said lunatic's estate, in the room and stead of your petitioner ; and that the costs, charges, and expenses of all necessary parties incidental thereto may be allowed to such person so to be appointed, in passing his accounts before the said Master ; or &c.

And your petitioner will ever pray, &c.

Order thereon.

That it be referred to the Master to take and pass the petitioner's accounts of his receipts and payments for and on account of the said lunatic and his estate, from the foot of his last account passed in this matter ; and therein the said Master is to make unto the petitioner all just allowances, and particularly an allowance of his reasonable and proper costs, charges, and expenses ; and also the reasonable and proper costs, charges, and expenses of the next of kin and heir-at-law of the said lunatic, of this application, and consequent thereon, and of passing the said accounts, such costs, charges, and expenses, to be taxed by the Master in rotation, of the High Court of Chancery. And I do hereby further order, that the balance (if any) which the said Master in Lunacy shall certify to be due from the petitioner, on passing the said account, be by him paid into the Bank, with the privity of the Accountant General of the Court of Chancery, in trust in this matter ; and the said Accountant General is to declare the trust thereof accordingly, subject to further order. And upon payment of the said balance (if any) into the Bank as aforesaid, I do hereby further order, that the petitioner be discharged from the committeehip of the said lunatic's estate, and that the recognizance entered into by the petitioner and his sureties, bearing date, &c., be delivered up by the Masters in Lunacy to be vacated and cancelled.—[*There was also the usual reference to the Master, to appoint another committee in the place of the petitioner ; notice to be given to the next of kin of lunatic, and Accountant General to draw, &c.*]

Petition for transfer of Funds after Lunatic's Death.

In the matter of S. B. late of a lunatic, lately deceased.
To the Right Honourable, &c.

The humble petition of J. B. of, &c., the committee of the person and estate of the above-named lunatic, and of two others the executors of lunatic's will.

SHEWETH,

That by an inquisition, &c. That E. W., Esq., one of the

Masters in Lunacy made his report in this matter (*statement of Master's report, and order to confirm it, and to transfer funds. The committee's bond.*)

That in further pursuance of the said order the costs, charges, and expenses by the said order directed to be taxed have been taxed and ascertained by the Taxing Master in rotation of the said Court of Chancery to whom the taxation of costs in this matter is referred at the sum of £ as by the certificate of the said bearing date the day of appears.

That the said S. B. departed this life on the day of having previously to the day of (*the time when the party was found to be a lunatic*) duly made and published her last will and testament bearing date the day of and thereof appointed your petitioners and executors who duly proved the same will in the Prerogative Court of the Archbishop of Canterbury, on the day of That your petitioner J. B. hath since duly accounted with your other petitioners for all monies received by him on account of the said lunatic's estate. That there is now standing in the name of the Accountant General of the Court of Chancery, in trust and to the credit of this matter the said £ *per annum*, Long Annuities, and £ cash, the dividend or payment which accrued on the said Long Annuities on the day of last after deducting the property tax thereon.

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to the Taxing Master of the High Court of Chancery, to whom the taxation of costs in this matter stands referred to tax the costs, charges, and expenses of your petitioners of and incident to and consequent upon this application. And that the Accountant General of the Court of Chancery may be directed to sell so much of the £ *per annum* Long Annuities for eighty years, from the day of standing in his name in trust in this matter as with the said sum of £ cash in the Bank, standing to the credit of this matter will be sufficient to pay the said costs, charges and expenses, when taxed; and, also the said sum of £ the amount of the said costs, charges and expenses already taxed, and that the same may be paid by the said Accountant General to your petitioner's solicitor. And that the residue of the said Long Annuities, after such sale of part thereof, may be transferred to your petitioners and the executors of the said S. B. to be by them applied in a due course of administration; and that the said bond of your said petitioner I. B. and his said sureties may be vacated.

And your petitioner shall ever pray, &c.

Order thereon.

Now upon hearing the said petition the joint affidavit of
 and sworn the day of last verifying the death
 and identity and certificate of the burial of the said lunatic, the
 probate of the will of the said late lunatic granted to the said peti-
 tioners and by the Prerogative Court of the Archbishop
 of Canterbury, and the Accountant General's certificate read and
 what was alleged by the counsel aforesaid. I do think fit and
 hereby order that it be referred to the Taxing Master
 of the High Court of Chancery, to whom the taxation of costs in
 this matter stands referred to tax, and certify the reasonable and
 proper costs, charges and expenses of the said petitioners, of and
 incident to and consequent upon this application. And I do
 hereby further order that the said costs, charges and expenses
 respectively, when taxed and certified by the said Master, and the
 sum of £ the costs, charges and expenses already taxed,
 (the total amount to be verified by affidavit), be raised by the
 Accountant General of the Court of Chancery, by sale of so much
 of the £ *per annum* Long Annuities now standing in his
 name, in trust in this matter, as with the sum of £ cash now
 remaining on the credit of this matter, or any other sum of cash
 which may be remaining on the credit of this matter at the time of
 the said sale, will be sufficient for the payment thereof; and one
 of the cashiers of the Bank of England is to have notice to attend
 the said sale, and to receive the money to arise thereby, who, upon
 receipt thereof, is to pay the same into the Bank, with the privity
 of the said Accountant General to the credit of this matter, and
 he is to declare the trust thereof accordingly. And I do hereby
 further order, that out of the money to arise by the said sale, the
 total amount of the costs, charges and expenses, to be verified by
 the said affidavit, be paid by the said Accountant General to
 the petitioner's solicitor. And I do think fit and hereby further
 order, that the residue of the said £ *per annum* Long Annuities
 after the sale thereout aforesaid, (such residue to be verified by
 affidavit), be transferred by the said Accountant General to the said
 petitioners and as the executors of the last will and
 testament of the said S. B., to be by them held and applied upon
 the trusts of and according to the said will, and in a due course
 of administration. And I do think fit and hereby further order,
 that the dividends, if any, to accrue on the residue of the said
 Bank Long Annuities, subsequently to the sale hereinbefore
 directed, be paid by the said Accountant General to the said
 and as such executors as aforesaid, to be by them applied
 according to the said will and in a due course of administration.
 And I do hereby further order, that the bond or recognizance
 entered into by the said petitioner, J. B., as the committee of the
 estate of the said S. B., and E. R., J. J., his sureties, bearing
 date the day of be delivered up by the Masters

in Lunacy, to be vacated and cancelled, and for the purposes aforesaid, &c.

Petition of Executor of Lunatic, that Receiver's Accounts may be passed up to the Lunatic's Death; that his Bond and that of the Committee and Sureties, may be vacated; and that Stock standing in the Name of the Accountant General may be transferred to the Executor.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*statement of the preliminary proceedings.*]

That the said [*lunatic*] departed this life on or about the day of having first duly made and published his last will and testament in writing, bearing date the day of and thereof appointed your petitioner, jointly with Esq., executor.

That your petitioner duly proved the same will on the day of in the Prerogative Court of the Archbishop of Canterbury.

That your petitioner, as the acting executor under the said will, is desirous that the receiver's accounts should be passed before the Masters in Lunacy, and the balance duly accounted for; and that his recognizance should be thereupon discharged.

That your petitioner is also desirous that the bond entered into by the said as such committee as aforesaid, dated the day of should be also delivered up by the Masters in Lunacy, to be vacated and cancelled.

That there are now standing in the name of the Accountant General of the Court of Chancery, in trust in this matter, [*sums of stock*], and in cash the sum of £ which your petitioner is desirous should be transferred and paid to him, as such executor as aforesaid, to be applied in a due course of administration.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to the Master in Lunacy to whom this matter stands referred, to take and pass the account of the receiver of the said lunatic's estate, of his receipts and payments for and on account thereof, from the foot of his last account passed in this matter, to the day of the death of the said lunatic; and that therein such Master may make unto the said all just allowances, and also an allowance of his costs, and of the costs of your petitioner and the next of kin of the said late lunatic, of passing the said account; and that the balance which may be found due from the said on the passing of such account, may be paid by him to your petitioner, as such executor as aforesaid, to be applied in a due

course of administraton; and that thereupon the recognizance entered into by the said as such receiver, and his sureties, may be vacated and discharged; and that for such purpose the proper officer may be directed to attend his Honour the Master of the Rolls, with the record of the said recognizance; and that the bond, so as aforesaid entered into by the said [committee], and and his sureties, may be delivered up by the Masters in Lunacy to be vacated and cancelled. And that it may be referred to the Taxing Master, in rotation, of the High Court of Chancery to tax your petitioner, and the heir-at-law and next of kin of the said late lunatic, their reasonable and proper costs, charges, and expenses incurred in and about this matter not already taxed, and of this application, and incidental thereto: and that what such Master shall tax for such costs, charges, and expenses, may be paid by the said the receiver, out of any monies in his hands belonging to the said lunatic's estate, and allowed to him on passing his aforesaid account. And that the aforesaid [stock] respectively standing in the name of the Accountant General of the Court of Chancery, in trust in this matter, may be transferred into the name of your petitioner as executor of the said late lunatic, to be by him applied in a due course of administration; and that the said Accountant General may also pay to your petitioner the said sum of cash, in the Bank, in trust in this matter, to be by him applied in like manner; or that your Lordship will be pleased to make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

The order made on this petition was nearly in the words of the prayer of the petition.



PETITIONS RESPECTING THE WILLS OF LUNATICS (a).

Petition of the Heir-at-Law and Next of Kin of a Lunatic, that the Will and the Title Deeds of the Estate of the latter may be deposited in the Master's Office, and that Service on one of the Next of Kin, who was Insane, may be dispensed with.

In the matter, &c.

To the Right Honourable, &c.

The humble petition of A., an infant, heir-at-law, and one of the next of kin of the above-named [lunatic], and of B., C., and

(a) See *ante*, pp. 431—433.

D., infants, three other of the next of kin of the said lunatic by E., their father and guardian.

SHEWETH,

That [*The commission of lunacy and inquisition; the reference to the Master to appoint committees; his report as to the lunatic's property, and the confirmation thereof, were stated.*]

That it is supposed the lunatic has made a will, and that such will, and also the title deeds and writings relating to the lunatic's estates, are in the hands, custody, possession, power, or control, of the said [*committees*], or one of them.

That your petitioners are desirous that such will (if any there be), title deeds, and writings, should be deposited in the office of the Masters in Lunacy for safe custody.

That the said the mother of the lunatic, is still of unsound mind, and notice of this application to her will be attended with expense, and cannot be productive of any benefit; but your Lordship's secretary will not draw up any order your Lordship may think proper to make, without proof of service on all parties interested.

That the said [*mother*] is in very poor circumstances, and has no funds belonging to her out of which the expense of issuing a commission in the nature of a writ *de lunatico inquirendo* could be defrayed.

Your petitioners, therefore, most humbly pray, that your Lordship would be pleased to direct, that the committee of the estate, and the committee of the person of the said lunatic, and each of them, and all other persons whomsoever, do deposit upon oath, in the office of the Masters in Lunacy, the will of the said lunatic (if any there be); and also all title deeds, writings, papers, and documents of title, relating to the estate and property of the said lunatic, wheresoever situate, in the hands, custody, possession, power or control of the said [*committee*], or either of them, or of any other person, for safe custody. And your petitioners further pray, that your Lordship would be pleased to direct, that in consequence of the unsoundness of mind of the said the lunatic's mother, notice of this application to her, and of any proceedings consequent thereon, or arising thereout, may be dispensed with on account of the expense attending the same; or that your Lordship would be pleased to make such further or other order in the premises, as to your Lordship may seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That the committee of the estate of the said lunatic, and
the committee of the person of the said lunatic, and all and

every other person or persons (in whose custody, possession, power, or control the same may be), do forthwith deposit any will, codicil, or testamentary paper of the said the lunatic; and also all title deeds, writings, papers, and documents of title relating to the estates and property of the said lunatic, wheresoever situate, in their, or any, or either of their hands, custody, possession, power, or control, in the office of the Masters in Lunacy, upon oath, as they, or either of them, shall direct, there to remain for safe custody, until further order. And I do think fit, and hereby further order, that, under the circumstances mentioned in the said petition, notice of this application, or of any proceedings arising thereout, to the mother of the said lunatic, and one of the next of kin, be dispensed with; and let due notice of attending the said Master be given to such person or persons (excepting the said mother of lunatic), as would be entitled to a distributive share or distributive shares of the said lunatic's estate, in case he were now dead intestate.

Petition of the Younger Children of the Lunatic, that his Will may be deposited in the Master's Office, and that Parties may be examined on Interrogatories.

In the matter, &c.

To the Right Honourable, &c.

The humble petition of, &c.

SHEWETH,

That [*Statement of the inquisition; the reference to the Master to appoint committees; the Master's report; and that the committee of the estate had examined the lunatic's papers in the absence of the other parties.*]

That your petitioners have heard, and believe, that the said lunatic has executed numerous wills or testamentary papers, but your petitioners know not where the same are, but are desirous that they should be discovered, and lodged in safe custody.

That the said lunatic is seised of large landed property, the greater portion of which he has the power of disposing of by will or otherwise.

Your petitioners, therefore, most humbly pray your Lordship, that the said [*committee of the estate*] may be ordered, within a week, to deposit, on oath, in the office of the Masters in Lunacy, all wills and other testamentary papers of the said lunatic, there to remain for safe custody, subject to the further order of your Lordship. And that it may be referred to the said Masters to inquire and certify jointly or severally what will or wills and other testamentary papers of the said lunatic doth or do exist, or hath or have existed, and where the same now are or is, or what has become thereof; and with liberty to examine

any person or persons he may think fit, upon interrogatories or otherwise, for the better discovery of the matters aforesaid; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

Petition of the Heir-at-Law and Next of Kin of a Lunatic, after his Death, that his Will may be delivered to a Proctor, to be proved.

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*Statement of the order directing the lunatic's will to be deposited in the Master's Office.*]

That the said Master, by his report bearing date the 28th day of July, 1829, certified, that, pursuant to the said order, the wills and codicils of the said lunatic had been deposited in his office by in a tin box sealed up, and the same still remains in the said office so sealed up.

That the said [*lunatic*] died on the 13th day of June, 1831, leaving your petitioner, A. B., his eldest son and heir-at-law, and your said last-named petitioner, and your petitioners C. and D., his only children and next of kin, him surviving.

Your petitioners, therefore, most humbly pray your Lordship, that the Masters in Lunacy or either of them may be ordered to open the box containing the wills and codicils of the said [*lunatic*], and to deliver his last will, with all codicils (if any) thereto, to Mr. _____ of Doctors' Commons, Proctor, for the purpose of being proved; or that your Lordship will make such further or other order in the premises, as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Petition of the Executor of a Lunatic (deceased), for Transfer of Funds and Payment of Money standing in the Name of the Accountant General in trust in the Matter of a Lunacy.

In the matter of _____ Esq., (deceased), a person of unsound mind.

To the Right Honourable, &c.

The humble petition of _____ Esq., the committee of the estate of the said [*lunatic*].

SHEWETH,

That, by an order, bearing date the 31st day of July, 1827, in this matter, it was ordered that it should be referred to _____ one

of the Masters of the High Court of Chancery, to inquire and certify who was or were the most fit and proper person or persons to be appointed the committee or committees of the person and estate of the said [*lunatic*].

That, the said Master, by his report bearing date the 4th day of August, was of opinion that your petitioner was a fit and proper person to be appointed committee of the estate of the said [*lunatic*], and that and two of the younger children of the said [*lunatic*], were fit and proper persons to be appointed committees of the person of the said [*lunatic*.]

That, by another order, bearing date the 8th day of August, 1827, made in this matter, the said Master's report was confirmed, and the care and custody of the person of the said [*lunatic*] were granted to the said [*committees*], and the care and management of his estate to your petitioner, the said

That, &c. [*Orders for the transfer of funds into the name of the Accountant General were stated.*]

That the said [*committee*] is appointed the sole executor and residuary legatee of the will and testamentary papers of the said [*lunatic*.]

That the said [*lunatic*] departed this life on the day of January, and that your petitioner has duly proved his said will, and two codicils thereto, in the Prerogative Court of the Archbishop of Canterbury.

That there now remain in Court, in the matter of the said [*lunatic*] the sum of £ cash, and the several sums of £ and £ [*the stock*] invested in the name of the Accountant General; and your petitioner is desirous of having the same respectively paid and transferred to him, as such executor as aforesaid.

Your petitioner, therefore, humbly prays your Lordship, that the sum of £ cash, and the several sums of £ and £ [*the stock*], invested in the name of the said Accountant General in trust in this matter, and all dividends thereon, may be paid and transferred to your petitioner, as the sole executor of the will and testamentary papers of the said [*lunatic*], (deceased), or that your Lordship will make such further or other order therein as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Order thereon.

Now upon hearing the said petition, the Accountant General's certificate, and the probate of the will of the said [*lunatic*], deceased, read, and what was alleged by the counsel aforesaid, [*i. e. for the petitioner and for the lunatic's next of kin*], and upon filing an affidavit verifying the death and certificate of the

burial of the said late [*lunatic*], I do think fit, and hereby order, that it be referred to the Taxing Master in rotation of the High Court of Chancery, to tax the next of kin of the said late [*lunatic*], their reasonable and proper costs, charges and expenses incurred in and about this application, and incident thereto, and consequent thereon, in case the parties differ about the same. And I do hereby further order, that the amount of the said costs, charges, and expenses, when taxed and certified by the Master, or otherwise settled, be paid by the petitioner [*committee*] to Mr. W. W., the solicitor for the said next of kin. And I do hereby further order, that the said Accountant General of the Court of Chancery do transfer the £ and £ [*the stock*], respectively, standing in his name in the books of the governor and company of the Bank of England, in trust in this matter, into the name of the petitioner, as the sole executor named in and appointed by the last will and testament of the said [*lunatic*], deceased, to be by him held and applied upon the trusts of and according to the said will. And I do hereby further order, that the said Accountant General do pay to the said [*committee*], as such executor as aforesaid, the whole of the cash now remaining on the credit of this matter, and also any dividends which may accrue on the said [*stock*] previous to the transfer thereof, hereinbefore directed to be by him also held and applied, as such executor as aforesaid, upon the trusts of and according to the said will. And let due notice of attending the said Master, upon the taxation of costs hereby directed, be given to the said [*committee*]. And, for the purposes aforesaid, the said Accountant General is to draw on the Bank, according to the form prescribed by the act of Parliament made for the relief of the suitors of the Court of Chancery, and the general rules and orders of the said Court in that case made and provided. And let this order be drawn up and entered by the Registrar of the said Court.

Petition to Supersede a Commission on the Lunatic's Recovery.

In the matter of A. B., late a lunatic.
To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of the above-named A. B.

SHEWETH,

[*Statement of the issuing the Commission of Lunacy—Master's report and appointment of Committees.*]

That the costs, charges, and expenses of and incidental to the suing out and prosecuting the said commission and consequent thereon, and the costs, charges, and expenses of almost all the proceedings which have been had in this matter, have been paid out of your petitioner's estate.

That the said [committees] have not yet rendered or passed a final account as such committees as aforesaid, and the last account passed by them as such committees is not carried beyond the month of April, 1841. That there is in the hands of the said [committees] a considerable sum arising from the said estate, whereof they are such committees as aforesaid, and more than sufficient to satisfy any costs, charges, and expenses, to the payment of which they or either of them are, or is, or may be entitled, and on their rendering or passing a true and final account, and after all such allowances shall have been made to them in respect of costs, charges, and expenses, or otherwise, as they or either of them are, is, or may be entitled to as such committees as aforesaid, a balance will appear to be and be found due from them. That your petitioner has been perfectly restored to his sound state of mind and understanding for the space of twelve calendar months now last past and upwards, and is desirous that the said commission should be now superseded.

Your petitioner therefore humbly prays your Lordship that he may be at liberty to attend in open Court for the purpose of being examined as to his soundness of mind and competency of understanding for ordering and managing his person and estate. And that the said commission and inquisition, and the grant and all other proceedings thereunder may be forthwith superseded and determined, and that a writ of *supersedeas* for that purpose may issue. And that it may be referred to the Taxing Master of the High Court of Chancery in rotation, to whom this matter stands referred, to tax all parties their costs of this application, and that the same, when taxed, may be paid to their respective solicitors, by sale of a competent part of the said sum of £ and that so much of the said sum of Bank 3*l.* *per cent.* Annuities, as shall remain after such sale, may be transferred into the joint names of your petitioner and his said wife. And that, upon payment thereof, the recognizance entered into by the said [committee] and his sureties may be delivered up by the Clerk of the Custodies, to be vacated and cancelled, or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem fit.

And your petitioner will ever pray, &c.

Signed by the said A. B.,	}	A. B.
the petitioner, in the		
presence of		
(E. F., his solicitor, in the matter of the petition.)		

Order thereon—Counsel appearing for the petitioner—for the heir-at-law and next of kin of the petitioner—and the committees of his person and estate.

Now upon reading the said petition and the several affidavits filed in support of the application for the commission of lunacy herein, and also the several affidavits filed in support of this application, and the said A. B. having this day attended, and been personally examined by me, and appearing to be in a sound state of mind and understanding, I do think fit and hereby order that the commission of lunacy which issued in the matter of the said A. B., and the inquisition taken thereon, and the grant and all proceedings under the said commission or relating thereto, be forthwith superseded and determined. And I do think fit and hereby further order that it be referred to the Taxing Master of the High Court of Chancery in rotation, to tax the reasonable proper costs, charges, and expenses of [*the committees*] as the committees of the person and estates of the said A. B., of and incident to the two several petitions presented by them on the day of and the day of and and also their reasonable and proper costs, charges, and expenses, and those of the next of kin (if any) incurred in this matter not already directed to be taxed and paid. And I do hereby further order that such costs, charges, and expenses when taxed be retained or paid by the said committees out of any money now in their hands, on account of the said A. B. and his estate, and they are to be allowed the same on passing their final account before the Master in Lunacy as such committees as aforesaid, and in case there shall not be any money in the hands of the said committees for the discharge of the said costs, charges, and expenses, then I do hereby further order that the amount thereof be paid to the said committees by the said A. B.; and I do hereby further order that it be referred to the Masters in Lunacy to take and pass the accounts of the said [*committees*,] of their receipts, and payments for and on account of the said A. B. and his estate as the committees thereof from the foot of their last account up to the date of this my order, and therein the said Master is to make unto the said committees all just allowances, and also an allowance of their costs, charges, and expenses of and incident to the passing of the said account, and I do hereby further order that the balance (if any) which the said Master may certify to be due from the said committees on passing the aforesaid account, be paid by them to the said A. B., and in case the said Master shall find a balance to be due to the said committee, then I do hereby further order that the same be paid to them by the said A. B. And I do hereby further order that upon payment of the said A. B. of the balance (if any) that may be due from the said committees, or in case there shall not be a balance due from

them, the bond, or recognizance entered into by the said committees, and [*two names,*] their sureties, bearing date the
 day of be delivered up by the Masters in Lunacy,
 to be vacated and cancelled, and let due notice of attending the
 said Master be given to the said A. B.

*Petition of the only Sister and Heiress-at-Law of a Lunatic, for a
 Reference to the Master to inquire as to Proceedings for declaring
 a Lunatic's Marriage to be void.*

In the matter, &c.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*Statement of the preliminary proceedings in the lunacy, and the lunatic's marriage, of proof that at that time she was a lunatic, and of its being known to the husband, whose sole object in marrying was to obtain the lunatic's property, which was considerable.*]

That your petitioner is advised that the marriage, had and solemnized between the said and the said [*lunatic*], is, under the circumstances attending the same, utterly invalid and null; but, for the purpose of having the same so declared, it will be necessary to institute certain proceedings in the proper Ecclesiastical Court, in the name and on the behalf of the said [*lunatic*.]

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to the Master to whom this matter stands referred, to inquire and certify whether it will be fit and proper, under all the circumstances of this case, that any and what proceedings should be taken, for the purpose of having the said marriage, so had between the said and the said [*lunatic*], judicially declared to be null and void; or that, &c.

And your petitioner will ever pray, &c.

Order according to the prayer.

*Petition of Appeal to the Queen in Council, against an Order in
 Lunacy (a).*

In the matter of [*lunatic,*] Esq., a lunatic lately deceased.

Unto the Queen's Most Excellent Majesty in Council.

The petition and appeal of [*the committees,*] committees of the person and estate of the said lunatic.

HUMBLY SHEWETH,

That, &c., [*Set forth such facts as are necessary for shewing grounds of appeal.*]

(a) See *ante*, p. 20.

That divers affidavits were filed on behalf of the said [*respondents*], in support of the allegations contained in their said petition; and that affidavits by divers persons of the highest character and respectability were also filed on behalf of your petitioners, in opposition thereto; and that by such last-mentioned affidavits it appeared (amongst other things) that the said petition of the said [*respondents*] came on to be heard before the Lord High Chancellor, on the day of 184 and that, by an order bearing date on that day, his Lordship was pleased to order that it, &c.—
[*The order appealed against was here set forth.*]

That your petitioners conceive themselves greatly aggrieved by the said last-mentioned order, and have therefore appealed therefrom to your Majesty in Council.

Your petitioners, therefore, most humbly pray, that your Majesty will be most graciously pleased to appoint a day for hearing this your petitioners' appeal, with summons for the said [*respondents*] to appear thereto; and that thereupon the said order, made by the Lord High Chancellor on the day of may be reversed, altered, or amended; and that your petitioners may have such further and other relief in the premises, as to your Majesty, in your great wisdom and justice shall seem meet.

And your petitioners shall ever pray, &c.

Petition to confirm the Master's Report for granting a Lease of the Lunatic's Property, and for the Taxation of several Costs.

In the matter of A. B., a person of unsound mind.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of committees of the estate of the said A. B.

SHEWETH,

That [*Statements of the commission of lunacy, and inquisition thereon, and grant of committeeship.*]

That in pursuance of the general orders in lunacy, E. W., Esq., one of the Masters in Lunacy, by his report made in this matter, and dated certified that in pursuance of the general orders in lunacy, a proposal had been laid before him by the committees of the estate of the said A. B., proposing that a lease should be granted to (*lessee*) of all those messuages, &c., situate, &c., for the term of twenty-one years from at the yearly rent of £ payable quarterly, clear of all taxes and outgoings whatsoever (the land tax only and the landlord's property or income tax only excepted), and also under and subject to the several covenants conditions, and agreements, mentioned and contained in the draft lease therein and hereinafter mentioned; and that such proposal had been supported by the following evidence which had been produced and read before him, *viz.*, (*a joint and several affidavit of, &c. &c. The Master states the attendance of solicitors before him—that he found*

that the lunatic was absolutely entitled to the property to be leased—the proposal of the lessee to take a lease—inquiries as to the circumstances and ability of the lessee to pay the rent—the result being the Master's belief that the lessee was a proper and desirable person to become lessee of the premises, and capable of paying the yearly rent.) And the said Master certified that he had settled and approved of the said draft lease, which had been left in the office of the Masters in Lunacy, and he found that the said (lessee) had, by a memorandum endorsed on the said draft lease so settled and approved of by the said Master, agreed to accept a lease of the said premises, upon the terms therein expressed. And the said Master was of opinion, that it would be fit and proper and for the benefit of the said A. B. and his estate, that a lease of the said messuages, situate in aforesaid, should be granted to the said (lessee), upon the terms thereinbefore mentioned, and set forth in the said draft lease, so settled and approved by him. That the said (lessee) has agreed to bear a moiety of the expense of preparing the said intended lease, and the counterpart thereof.

That by an order, &c. (*other orders are referred to.*)

That no order has been made for the taxation of the costs, charges, and expenses referred to in either of the orders lastly hereinbefore mentioned. And your petitioners have incurred other costs, charges, and expenses, in and about and in relation to the general management and affairs of the estate of the said A. B., in their character of committees of the said estate, and which could not be included in or allowed to them in any previous taxation of costs in this matter.

Your petitioners therefore most humbly pray your Lordship that the said report of (the Master in Lunacy,) bearing date the day of may be confirmed. And that your petitioners may be at liberty to grant a lease of the said messuages, numbered from one to twenty, both inclusive, to the said (lessee), at the rent and upon the terms, and subject to the covenants and conditions so settled and approved by the said Master. And that it may be referred to the Taxing Master of the High Court of Chancery, to whom the taxation of costs in this matter stands referred, to tax as between solicitor and client, the costs, charges, and expenses of your petitioners, and of the next of kin and co-heiresses-at-law of and incident to the preparing the said lease, and a counterpart thereof, and to the proceedings before the said Master in and relative to his settling and approving of the said draft lease, and of his said report and consequent thereon. And also of and incident to and consequent upon the thereinbefore mentioned orders of the day of and day of And also in relation to the general management and affairs of the estate of the said A. B., and also of and incident to this application, and consequent thereon. And that such several costs (*save and except a moiety of the expense of preparing the said*

intended lease and counterpart), may be retained and paid by your petitioners out of the rents and profits of the said A. B.'s estate, or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon.

Now upon hearing the said petition read, and what was alleged by the counsel aforesaid, (i. e. *counsel for the committees, and also for the co-heiresses-at-law and next of kin of the lunatic*), I do think fit, and hereby order, that the said report be confirmed ; and I do hereby further order, that the said petitioners as the committees of the estate of the said A. B., be at liberty to grant a lease of the messuages numbered respectively, (*numbers*), and stated in the said report to be situate in to (*lessee*) named in the said report at the rent and upon the terms and subject to the covenants and conditions specified in the draft lease settled and approved of by the said Master. And I do hereby further order, that upon the Masters in Lunacy, jointly or severally, signing their or his allowance of the said lease, the said petitioners as such committees as aforesaid do, in the name and on the behalf of the said A. B., execute the said lease upon the said (*lessee*), executing a counterpart thereof. And I do think fit and hereby further order, that it be referred to the Taxing Master of the High Court of Chancery, to whom the taxation of costs in this matter stands referred, to tax and certify the reasonable and proper costs, charges and expenses of the said petitioners, and of the next of kin and co-heiresses-at-law of the said A. B., of and incident to the preparing the said lease and a counterpart thereof, and to the obtaining the aforesaid report, and the two several orders made in this matter, bearing date the day of and the day of And also in relation to the general management and affairs of the estate of the said A. B. and consequent thereon respectively, and also those of and incident to and consequent upon this application. And I do hereby further order, that such costs, charges and expenses when so taxed and certified, (excepting a moiety of the expenses of preparing the aforesaid lease and counterpart), be retained and paid by the said committees, out of the rents, profits, and produce of the estate of the said A. B., and they are to be allowed the same when so paid on passing their accounts before the Masters in Lunacy, or either of them, and let due notice of attending the said Taxing Master on the aforesaid taxation of costs be given to such person or persons as would be entitled, &c.

Petition of the Committee for a Reference, as to a Renewal of Leases for Lives, for the Lunatic.

In the matter of a lunatic.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*Statement of the commission of lunacy; the appointment of a committee; the subsisting leases for lives, with a covenant on the part of the lessees to renew on the dropping of a life; and other deeds, shewing in whom the interest in the leases was vested.*]

That in the opinion of your petitioner it will be for the benefit of the said lunatic's estate, that the said leases should be renewed; and your petitioner is also advised, that, for the purpose of such renewal, and in compliance with the covenant contained in the said indenture of as hereinbefore mentioned, it is necessary that the said [*an under-lessee of part*], his heirs or assigns, should release and surrender his or their estate or interest in the premises, granted and conveyed to him by the said last-mentioned indenture; and that upon the renewal of the lease, comprising the premises so granted to the said [*under-lessee*], he, the said [*under-lessee*], his heirs, or assigns, will be entitled to have a new grant and release made to him or them of the premises conveyed to him by the said indentures of, &c., [*date*.]

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to the Masters in Lunacy, to inquire and certify jointly or severally, whether it will be for the benefit and advantage of the said lunatic's estate, or is otherwise necessary and expedient, that the said leases should be renewed, upon payment by your petitioner to the said [*lessor*] of the respective fines of £ and £ with interest thereon, as stipulated in the said respective indentures of lease, and the stamp duties, fees, and expenses incident to such renewal; and that it may also be referred to the said Masters, to inquire and certify jointly or severally, who is a proper person to be nominated as a *cestui que vie* in such renewed leases, in the place and stead of the said deceased; and whether it is proper that the said [*under-lessee*], his heirs, or assigns, should be required to surrender his or their estate, term, and interest under the said indentures of [*date*], in the premises thereby conveyed to him, and that a new grant and lease of the same premises should be made to him or them for and during the lives now in being, and the life of such person as shall be named in such renewed lease or leases, at and under the like yearly rent and reservation, and with, under, and subject to the like covenants, conditions, and agreements, *mutatis mutandis*, as were reserved and contained in the said indenture of [*date*]; or that, &c.

And your petitioner will ever pray, &c.

*Petition to confirm the Master's Report as to the Renewal of a
College Lease for the Benefit of the Lunatic.*

The humble petition of _____ committee of the estate of the
said lunatic, and also his sole next of kin.

That, by an order made in this matter, on the petition of your petitioner, and bearing date it was referred, &c. [*Reference to inquire as to terms of renewal, and the report thereon, were set forth.*]

And your petitioner will ever pray, &c.

Petition of the Committee of the Estate for a Reference to the Master to inquire as to making an Allowance to Tenants of a Farm, for Losses they had sustained, and an Abatement of Rent (a).

In the matter of a lunatic.

To the Right Honourable, &c.

The humble petition of, &c.

SHEWETH.

That [*Statement of the commission of lunacy; the appointment of a committee of the estate; the letting of the farm, &c.; and that the tenants had sustained losses in consequence of wet seasons.*]

That besides the losses which have already fallen on the present tenants as above detailed, your petitioner is informed by persons competent to form a judgment in such matters, that the said farm and lands are much reduced and lessened in value, since the same were let to the present tenants, by the great depreciation in value of every description of farming stock and produce, and the increase of poor and other rates, and on account of the additional sum which it has lately become necessary to pay for labour.

That one of the present tenants, and some other members of his family, have been in the occupation of the said farm for many years past, and have, as your petitioner hath been informed and believes, used their best endeavours in the good conduct and management of the said farm.

That the said [*tenants*], the present tenants of the said farm, have applied to and requested your petitioner to make them some allowance in respect of the very serious losses which they have sustained in manner hereinbefore set forth, and to make some reduction in their rent for the time to come.

Your petitioner, therefore, most humbly prays your Lordship, that it may be referred to the Masters in Lunacy, to inquire and certify, jointly or severally, to your Lordship, whether it will be fit and proper, or for the benefit of the said lunatic or his estate, that any and what allowance should be made to [*tenants*], the present tenants of farm, for or in respect of the losses which, under the circumstances hereinbefore detailed and set forth, they have sustained in and during the years and and whether it will be fit and proper, and for the benefit of the said lunatic and his estate, that any, and if any, what reduction or abatement should be made to the said [*tenants*] out of the rent now due, and henceforth to accrue due from the said [*tenants*] for rent of the said farm called farm; and from what time such reduction or abatement should commence, and up to what time the same should continue; or that your Lordship would be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

(a) See *ante*, pp. 250, 251.

An order was made nearly in the words of the prayer of the petition, notice of attending before the Master to be given to the next of kin.

Petition of the Committees of the Person and Estate, for a Reference to the Master to inquire as to Repairs on the Lunatic's Estate (a).

In the matter of a lunatic.
To the Right Honourable, &c.
The humble petition, &c.

SHEWETH,

That [*Statements of the commission and inquisition, and of the appointment of committees, and the grant of the custody.*]

That the said lunatic is entitled, as tenant in tail in possession, to a messuage or dwelling-house, farm, lands, and hereditaments, situate in &c., now in the occupation of

That the said messuage or dwelling-house, and the farm-buildings, and also the fences of the said farm, require considerable repairs, the expense of which repairs has been estimated at the sum of 500*l.*, or thereabouts.

Your petitioners, therefore, most humbly pray your Lordship, that it may be referred to the Masters in Lunacy to inquire and certify, jointly or severally, whether it will be fit and proper, and for the benefit of the said lunatic and his estate, having regard to the lunatic's interest therein, that the said messuage or dwelling-house, and the farm-buildings and fences, should be repaired; and that the said Masters may inquire and certify, jointly or severally, what sum will be reasonable and proper to be allowed for such repairs; and that he may be at liberty to state any special circumstances; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order according to the prayer of the petition.

Petition of Committees to confirm the Master's Report, made in pursuance of the Reference under last Petition.

In the matter of a lunatic.
To the Right Honourable, &c.
The humble petition, &c.

SHEWETH,

That [*Statement of the order of reference to the Master made on the last petition, and his report.*]

Your petitioners, therefore, humbly pray your Lordship, that the

(a) See *ante*, pp. 274, 275.

Master's said report may be confirmed ; and that they may be allowed to pay the said sum of 500*l.* for the said repairs out of the rents and profits of the said lunatic's estates, und be allowed the same on passing their accounts before the Masters in Lunacy. And that it may be referred to the Taxing Master in rotation of the High Court of Chancery, to tax your petitioners and the next of kin of the said lunatic their costs, charges, and expenses of the said petition and reference, and incident thereto, as between solicitor and client. And that your petitioners may be at liberty to retain and pay what the said Taxing Master shall certify to be proper to be allowed for such costs, charges, and expenses, and that they may be allowed the same on passing their accounts before the said Masters in Lunacy. And that it may be referred to the said Masters from time to time to inquire and certify whether any and what repairs or improvements are necessary to be done on the estates of the said lunatic, or any of them, and out of what fund the expenses of such repairs and new buildings ought to be paid ; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Petition to confirm Master's Report, and for Order to cut Timber on Lunatic's Estate (a).

In the matter of a lunatic.

To the Right Honourable, &c.

The humble petition, &c. the committees of the estate of the above-named lunatic.

SHEWETH,

That by an order made in this matter, upon the petition of the said [committees], bearing date the 9th day of March, 1832, it was ordered, that it should be referred to the Master to whom this matter stands transferred, to inquire and certify whether it would be fit and proper, and for the benefit of the said lunatic and his estate, to cut down any and what timber, not ornamental, standing and growing upon the said lunatic's estate, in the county of

[*The Master's report was stated, founded upon an affidavit of a land agent.*]

Your petitioners, therefore, humbly pray that the Master's said report may be confirmed, and that the said the receiver of the said estate, may be ordered to cut down such timber trees standing and growing on the said lunatic's estates, in the county of as are particularly mentioned in the therein stated affidavit of the said [*land agent*], and in the said Master's

That your petitioners are advised that, under and by virtue of an Act of Parliament passed in the first year of the reign of his present Majesty King William the Fourth, intituled "An Act for Consolidating and Amending the Laws relating to Property belonging to Infants, *Femes Covert*, Idiots, Lunatics, and Persons of Unsound Mind," the real estates of the said [*lunatic*], or a sufficient part thereof, are subject to be sold or mortgaged for the purpose of raising money for payment of the costs of applying for and obtaining the commission of lunacy issued in this matter, and in opposition thereto, and all proceedings under the same commission, and the costs of such sale or mortgage.

Your petitioners, therefore, most humbly pray your Lordship, that a sum of money sufficient for the payment of the said sums of £ and £ the remainder of the said costs, charges, and expenses of your petitioners and of the said and also for payment of the said sum of £ so due to and the costs attending such sale or mortgage, may be raised by sale or mortgage of a part of the said [*lunatic's*] real estates; and that it may be referred to the Masters in Lunacy, to ascertain what part of the said real estates ought to be sold or mortgaged for that purpose; or that, &c.

And your petitioners will ever pray, &c.

Order thereon.

Order that it be referred to the Masters in Lunacy, to inquire and certify, jointly or severally, whether it will be fit and proper that any, and, if any, what part or parts of the real estates of the said [*lunatic*] should be sold or mortgaged for the purpose of raising the several sums of £ and £ mentioned in the said petition, and likewise the principal sum of 3,000*l.* therein also mentioned, and also the costs of and attending such sale or mortgage (if any). And after the said Masters or Master shall have made their or his report, such further order shall be made as shall be just. And let due notice of attending the said Master be given to [*the committee of the estate, the heir-at-law, and next of kin of the lunatic*].

Prayer of Petition of Committee of the Person and Estate for a Reference as to Sale of part of Lunatic's Estate for Payment of Incumbrances and Debts.

Your petitioner, therefore, most humbly prays your Lordship that it may be referred to the Masters in Lunacy to inquire, whether it is necessary and fit and proper, and for the benefit of the said lunatic and his estate, that any and what part or parts of

the estates of the said lunatic, should be sold for the discharge of the incumbrances upon the same, and for payment of the debts and charges otherwise due from the said lunatic's estate, and what sum will be required to be raised for that purpose, and that he may be at liberty to make a separate report thereof, and if the said Masters, or one of them, shall be of opinion that any such sale is necessary and proper, that they or one of them may be at liberty forthwith to issue advertisements, and settle and approve of particulars and conditions for the sale of such part of the estates of the said lunatic, as he may think fit; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Prayer of Petition of the Committees of the Estate, for confirming Reports of the Master approving of the Sale of Three Lots of a Lunatic's Estate to a purchaser.

Your petitioners, therefore, humbly pray your Lordship, that the Master's said reports [*approving sales,*] bearing date, &c., may be absolutely confirmed; and that the said [*purchaser*] may be ordered to pay, on or before the day of into the Bank of England, in the name and with the privity of the Accountant General of the Court of Chancery, in trust in this matter, to an account to be intitled, "The Produce of the Lunatic's Interest in the Leasehold Property sold," the said sum of £ being the purchase money for the premises comprised in the said lot 10, and the said sum of £ being the purchase money for the premises comprised in the said lots 9 and 11, in the said Master's said reports respectively mentioned, making together the sum of £ And that your petitioners, as the committees of the said lunatic's estates, may thereupon be directed to execute in the name and on the behalf of the said lunatic, a proper assignment or assignments, or other assurance, of all the estate and interest of the said [*lunatic,*] of and in the said premises comprised in the said lots 9, 10, and 11, respectively, unto the said [*purchaser,*] his executors, administrators, and assigns, or as he or they shall direct, such assignments and other assurances to be prepared by and at the expense of the said [*purchaser,*] his executors, administrators, or assigns, wherein all proper parties may be directed to join; and that thereupon the said [*purchaser*] may be let into the possession of the said premises, and into the receipt of the rents and profits thereof, from the day of And that your petitioners may be allowed their reasonable and proper costs and charges incurred in and about

the said agreement, and the reference relating thereto, directed to be made as aforesaid, and of this application, and consequent thereon; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Petition of Purchaser to be Allowed to Pay Purchase Money into the Bank.

In the matter of G. L., a person of unsound mind.
To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of W. T. of in the county of
SHEWETH,

That one of the Masters in Lunacy, to whom this matter stands referred by his report, bearing date the day of After reciting that in pursuance of your Lordship's order, bearing date the day of for that purpose, he had been attended by the solicitors for and in the said order named. And reciting (amongst other things) that by his report made in this matter, and dated the day of 184 he had certified to your Lordship that it was fit and proper that the whole of the real and personal estate, property, and effects of the said G. L. should be sold by public auction, by Messrs. of aforesaid, on the day of 184 and such following days as might be necessary; and that the said Master had settled and approved of proper particulars and conditions of sale of the freehold and copyhold hereditaments in his said report, mentioned and fixed the following reserved biddings, viz., for Lot No. 1, the sum of £ &c., and that he had appointed of in the county of to bid for such hereditaments at the sale accordingly. And the said Master found that the several real and personal estate, property, and effects of the said G. L. had been put up for sale accordingly, at the time and place aforesaid, and a list of the biddings offered at such sale, and the names of the bidders had been laid before him and duly verified by the affidavit of R. A. of aforesaid, sworn in this matter on the day of And the said Master found that C. L. of aforesaid, as agent for your petitioner, did for the premises comprised in Lot No. bid the sum of £ and that a greater sum was offered for the said lot, and that the said sum of £ so bid for the said lot at such sale exceeding the amount of such reserved bidding, the said Master did therefore approve of and allow your petitioner as the purchaser of the said lot, at the said sum of £ and that he had in the schedule to his said report annexed, set forth the description of the property so

purchased by your petitioner as contained in the said particulars of sale. That by the third condition, under which the said estates were sold, it was provided that every purchaser should, on or before the day of pay his purchase money into the Bank of England, in the name and with the privity of the Accountant General of the Court of Chancery, in trust in the matter of G. L., a person of unsound mind, and on payment thereof shall be let into possession as from the day of preceding.

That your petitioner as such purchaser, is desirous of paying into Court the said purchase money and being let into possession of the premises comprised in Lot No. 2, in pursuance of the condition above referred to.

Your petitioner therefore humbly prays your Lordship that it may be ordered that the said report of the said Master dated the day of may stand confirmed absolutely, and that your petitioner may be at liberty to pay his said purchase money into the Bank of England, in the name and with the privity of the Accountant General of the Court of Chancery in trust in this matter—"The Real Estate Account." And that it may be ordered that the said purchase money may not be paid out of Court without notice to your petitioner. And that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioner will ever pray, &c.

Petition of the Purchaser of a Lunatic's Estate to be allowed to pay his Purchase Money into the Bank, and for a Conveyance.

In the matter of a lunatic.

To the Right Honourable, &c.

The humble petition of, &c [*the purchaser.*]

SH EWETH,

That [*Statement of an order for sale of the lunatic's real estate.*]

That the said Master, by his report bearing date the day of certified that, in pursuance of such order, he was attended by the solicitors for the petitioner, &c. [*The Master's report of the proceedings on the sale and his approval of the purchaser were stated.*]

That, by an order made by your Lordship in this matter, bearing date the day of August the said report of the said Master was duly ratified and confirmed.

That, by one of the said conditions annexed to the particulars of sale of the said estate, your petitioner is directed to pay the said purchase money into the Bank of England, with the privity of the Accountant General of the Court of Chancery.

Your petitioner, therefore, humbly prays your Lordship, that he may be at liberty forthwith to pay the said sum of 1500*l.*, being

the consideration money for the purchase of the said estate, into the Bank of England, with the privity of the said Accountant General, in trust in this matter. And that your Lordship will be pleased to order the committee of the said estate to convey the said hereditaments and premises to your petitioner. And your petitioner will ever pray, &c.

Order thereon.

That the said purchaser do forthwith pay the sum of 1500*l.*, being the amount of the purchase money for the real estate of the said lunatic mentioned in the said petition, and also the interest due thereon, at the rate of 5*l. per cent. per annum*, from the 4th day of November to the time of such payment (the amount thereof to be verified by affidavit), into the Bank of England, in the name and with the privity of the Accountant General of the Court of Chancery, on the credit of this matter, to an account to be intituled, "The Produce of the Sale of the real Estate of the said Lunatic;" and the said Accountant General is to declare the trust thereof accordingly. *In an order of this kind it is sometimes added*—[And I hereby further order, that the said sum of £ when so paid into the Bank, be not transferred or disposed of without notice to the said [*purchaser*], or to his solicitor.] And I do hereby further order, that upon the said sum of £ being so paid into the Bank as aforesaid, the said [*purchaser*] be let into the possession of the said hereditaments and premises, and into the receipt of the rents and profits thereof, from the day of last. And I do hereby further order, that the said sum of 1500*l.*, and the interest aforesaid, when paid into the said Bank as before directed, be laid out by the said Accountant General in the purchase of Bank 3*l. per cent.* Consolidated Annuities, in trust in this matter, and placed to the account aforesaid; and he is to declare the trust thereof accordingly, subject to further order. And I do think fit, and hereby further order, that, upon the said sum of 1500*l.* and interest being paid into the said Bank as aforesaid, the said [*committee*], the committee of the estate of the said lunatic, do forthwith in the name and on the behalf of the said lunatic, execute a proper conveyance or other assurance of the hereditaments and premises in the said petition mentioned; and all the estate, right, title, and interest whatsoever of the said lunatic therein and thereto, subject to the dower of the said and also to the mortgage on the said estate in the said petition respectively particularly mentioned, unto the said [*purchaser*], his heirs, executors, administrators, and assigns, or as he or they shall direct or appoint; such conveyance or assurance to be settled by the Master, to whom this matter stands referred, in case the parties differ

about the same ; in which case let due notice of attending the said Master be given to all parties interested ; and for the purposes aforesaid the said Accountant General is to draw, &c.

Prayer of Petition of the Committees of the Estate for a Reference as to completing a Contract for the Purchase of an Estate for the Lunatic.

Your petitioners, therefore, humbly pray your Lordship, that it may be referred to the Masters in Lunacy, to inquire and certify jointly or severally to your Lordship whether it will be fit and proper, and for the benefit of the said lunatic's estate, that the said contracts so as aforesaid entered into by your petitioners for the purchase of the said lands and hereditaments, should be carried into effect, and whether good titles can be made to the said lands and hereditaments. And if the said Masters or one of them, shall be of opinion that it will be for the benefit of the said lunatic's estate that the said contracts should be carried into effect, and that good titles can be made to the said lands and hereditaments so contracted to be purchased, then out of what fund the purchase-money for the same should be paid. And that the said Masters or either of them may be at liberty to make a separate report or separate reports relating to all or any of the said matters, and to state any special circumstances, with their or his opinion thereon, to the Court ; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Prayer of a Petition that the Committee may enter into a Contract for Purchase approved by the Master.

That your petitioner, as the committee of the estate of the said lunatic, may be at liberty, subject to the approbation of the Master, to enter into a contract or contracts for the purchase of one or both of the estates in the said report mentioned to be situate in &c., in the name and on the behalf of the said lunatic ; and that the said estates when purchased may be deemed and considered as personal estate to the extent of the sum which may be raised by sale of the Bank Annuities standing in the name of the Accountant General of the Court of Chancery on the credit of this matter.

Petition of Committee of the Estate, to confirm the Master's Report and to complete a Purchase.

In the matter of a lunatic.

To the Right Honourable, &c.

The humble petition of, &c., the committees of the estate of the above-named lunatic.

SHEWETH,

[Statement of the order of reference to the Master as to purchase, and his report thereon, finding that it would be for the benefit of the said lunatic's estate that the contract for the purchase of lands should be carried into effect, that a good title could be made to the same, that the purchase money should be paid by the committees out of the rents of the lunatic's estates, and the amount thereof charged upon the lands purchased and be considered as part of the said lunatic's personal estate.]

Your petitioners, therefore, most humbly pray your Lordship, that the said Master's said report, bearing date the day of may be confirmed; and that your petitioners, as the committees of the estate of the said lunatic, may be at liberty on his behalf to complete the purchase of the said lands and hereditaments so as aforesaid contracted to be purchased of the said [*vendor*,] and to pay the purchase money for the same out of the rents and profits of the said estates of the said lunatic, and that they may be allowed the same on passing their accounts before the Masters in Lunacy, and that it may be referred back to the said Masters or one of them, to settle and approve of a proper conveyance of the said lands and hereditaments so contracted to be purchased of the said [*vendor*,] and appoint two fit and proper persons to whom the said lands and hereditaments may be conveyed in trust for the said lunatic, the said conveyance to contain a declaration that the rents and profits of the estates of the said lunatic, to be applied in payment of the said purchase money, shall form a lien on the said lands and hereditaments so as aforesaid contracted to be purchased of the said [*vendor*] in trust for the said lunatic, his executors, administrators, and assigns. And that it may also be referred to the Taxing Master in rotation of the High Court of Chancery, to tax your petitioners and the next of kin of the said lunatic their costs, charges, and expenses incurred in the purchase of the said lands and hereditaments from the said [*vendor*,] and in and about the application for the said order and consequent thereon, as between solicitor and client, and that the said costs, charges, and expenses, when taxed, may be paid by your petitioners out of the rents and profits of the said lunatic's estates, and be allowed them in passing their accounts before the Masters in Lunacy, or that your Lordship will be pleased to make such further

or other order in the premises as to your Lordship shall seem meet.

And your petitioners shall ever pray, &c.

PETITION OF A CURATOR.

For a Reference to the Master, to inquire whether the party beneficially interested in Stock had been found a Lunatic.

In the matter of Esq., of in the county of in Scotland, a lunatic, and in the matter of an act of Parliament, passed in the first year of the reign of his late Majesty King William the Fourth, entitled “An Act for Consolidating and Amending the Laws relating to property belonging to Infants *femes coverts*, Idiots, Lunatics, and Persons of Unsound Mind.”

To the Right Honourable, &c.

The humble petition of [curator], of North Britain, lawful curator of the said [lunatic.]

SHEWETH,

That, by an inquisition taken according to the usage and custom of Scotland, by the Sheriff Substitute of Aberdeenshire, pursuant to mandate, it was (amongst other things) found that the said [lunatic] was at the time of taking the same, and had been from the day of *incompos mentis* and fatuous; and that the petitioner was the next of kin and lawful cousin on the paternal side of the said [lunatic,] and was over and above the age of twenty-five years.

That, by a letter of gift of curatory, dated Edinburgh, the day of under testimony of the seal ordained by the treaty of union to be kept and used in Scotland in the place and stead of the Great Seal, your petitioner was made, constituted, and ordained lawful curator of the said [lunatic,] and administrator of all and singular his lands, hereditaments, annual rents, possessions, and goods, moveable and immoveable.

Or, instead of the above allegations, the following statement of the appointment of a curator bonis—

“That, by an act and decreet of the Court of Session in Scotland, bearing date the day of and made upon the petition of [names of the wife and children of the lunatic and two others,] the nearest collateral relations on the father’s and mother’s side of the family of the said [lunatic], after reciting, that for nearly two years past the mental faculties of the said [lunatic] had been considerably impaired, so much so, as to render him quite unfit for

attending to any business, or for conducting his own affairs, and that he then continued in such state, as appeared by the medical certificates therein mentioned or referred to, and reciting, that the said lunatic was proprietor of the estate of in the county of Dumfries, and had vested part of his fortune in India Stock; and that it had been found that the said estate could not be managed beneficially, nor the dividends on the India Stock uplifted, without the aid of a curator *bonis*; and reciting, that the said petitioners, by their said petition, prayed that your petitioner might be appointed curator *bonis* to the said [*lunatic*,] with the usual powers; and that such appointment should subsist until it should be competently recalled, your petitioner finding sufficient security before extract; and reciting, that the said petition had been read and considered by the Lords of Council and Session, on the day of and that their Lordships had appointed the same to be intimated in the minute book, and on the walls for eight days; and that the said petition had been duly intimated in terms of the aforesaid interlocutor; and reciting, that a bond of caution had been accordingly given in, the Lords of Council and Session did nominate and appoint your petitioner to be curator *bonis* (a) to the said [*lunatic*], with the usual powers, and did decern that, upon the ingiving of the aforesaid bond, which had been since given in, the said act and decreet should be given out."

That the said [*lunatic*] is entitled (amongst other things) to the sum of [*description of stock*,] standing in his name, in the books of the Governor and Company of the Bank of England.

That your petitioner is desirous of having such stock transferred into his own name, and of receiving the dividends now due thereon.

Your petitioner, therefore, humbly prays your Lordship, that it may be referred to the Masters in Lunacy, to inquire and certify jointly or severally whether the said [*lunatic*] has been declared a lunatic within the intent and meaning of the aforesaid act of Parliament, and whether the personal estate of the said [*lunatic*] has become vested in your petitioner as curator [*or, curator bonis*,] according to the laws of Scotland, where the said [*lunatic*] resides; and in case the said Masters, or either of them shall find that the said [*lunatic*] has been declared a lunatic, and that his personal estate has become vested in your petitioner as curator [*or, curator bonis*] as aforesaid, that some proper person may be appointed, either to transfer the said sum of £ [*stock*,] now standing in the name of the said [*lunatic*] in the books of the Bank of England as aforesaid, into the name of your petitioner, and to receive the dividends now due on the said stock, and make payment thereof to your petitioner, or to transfer the said sum of £ [*stock*] into the name, and with the privity of the Accountant

(a) See *ante*, p. 32.

General of the said Court of Chancery, to the credit of an account to be intituled "the Account of Esq., a lunatic," and to receive the dividends due on the said stock, and pay the same (the amount thereof to be verified by affidavit,) into the Bank, with the privity of the said Accountant General, to the credit of the like account, or otherwise, as to your Lordship may seem meet.

And your petitioner shall ever pray, &c.

The substance of the usual order made on a petition of this kind is stated, *ante*, pp. 267, 268, the Master was also directed to inquire whether the curator had given security for the application of the stock.

PETITIONS RELATING TO LUNATIC TRUSTEES SO FOUND BY INQUISITION (a).

Petition for Reference to the Master, to inquire whether Lunatic is a Trustee.

In the matter, &c., and in the matter of an Act of Parliament, passed in the first year of the reign of King William the Fourth, intituled "An Act for Amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees; and for enabling Courts of Equity to give effect to their Decrees and Orders in certain cases."

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*The inquisition of lunacy, and the appointment of committees, and the deed by which real estate was conveyed to the lunatic in trust for the petitioner, were stated.*]

That the legal estate in fee simple of and in the said hereditaments and premises, comprised in the before-stated indentures of [date] is now, as your petitioner is advised, vested in the said [lunatic], as a trustee for your petitioner, within the intent and meaning of the said Act of Parliament.

Your petitioner, therefore, most humbly prays, that your Lordship will be pleased to refer it to one of the Masters of the High Court of Chancery, to inquire and certify whether the said [lunatic] is a trustee or mortgagee, within the intent and meaning of the said act of Parliament, of the hereditaments

(a) See *ante*, pp. 495—497.

and premises comprised in the indentures of [date] hercinebefore stated, and under what circumstances, and, if a trustee, for whom ; and whether the said [lunatic] has any and what beneficial estate or interest in the said premises ; or, that your Lordship will be pleased to make such further or other order in the premises as to your Lordship may seem just.

And your petitioner will ever pray, &c.

Order thereon.

That it be referred to the Master in rotation of the High Court of Chancery to inquire and certify whether the said [lunatic] be seised or possessed of the hereditaments and premises in the petition mentioned, or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, upon any and what trust or trusts, or by way of any and what mortgage, and for whom, within the intent and meaning of an act passed, &c. [title of act, ante, p. 944] ; and whether the said [lunatic] hath any and what beneficial estate or interest therein. And after the Master shall have made his report, such further order shall be made as shall be just ; and let due notice of attending the said Master be given to the committee of the said lunatic's estate, and to all other parties interested in the matters aforesaid.

Petition of Parties beneficially interested in Estate, to confirm Master's Report, and for Conveyance by Committee of Lunatic of real Estate vested in him as Trustee.

In the matter of a lunatic, and in the matter of an act,
&c. ante, p. 944.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [Statements—a will creating trusts ; the order of reference, and the Master's report, finding that the lunatic was seised, jointly with other persons, of certain real estates ; and that the lunatic was a trustee of the same premises, within the meaning of the act of Parliament, 11 Geo. 4 & 1 Wm. 4, c. 60, for the petitioners ; and that the said lunatic had not any beneficial estate or interest in the premises.

Your petitioners, therefore, humbly pray that the Master's said report may be confirmed, and that the said [committee] may be directed, by the order of your Lordship, in the place of the said [lunatic], to release and convey the said messuages, so vested in him as aforesaid, and all his estate, right, title, and interest in and to the same, unto your petitioners the said

their heirs and assigns, or as they shall direct or appoint, in manner hereinbefore mentioned, or otherwise; or that your Lordship will make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners, &c.

Order thereon.

That the Master's said report be confirmed. And I do hereby further order, that upon payment by the petitioners of the costs and expenses of the committee of the said [*lunatic's*] estate, incurred in and about the order of reference made in this matter on the day of and of this application and consequent thereon, such costs, charges, and expenses to be taxed by the Taxing Master in rotation of the High Court of Chancery, in case the parties differ about the same; and that the said as such committee, do in the place and on the behalf of the said [*lunatic,*] join with the surviving co-trustees named in the said report, and with all other necessary parties, if any, and in such manner as the said petitioners shall nominate, direct, or appoint, in releasing, conveying, and assuring the hereditaments and premises mentioned in the said report, of which the said [*lunatic*] is found to be seised or possessed jointly with the said [*other trustees*] as therein also mentioned, and all the estate, right, title, and interest whatsoever of the said [*lunatic*] therein or thereto, unto and to the use of the said petitioners, the purchasers thereof, their heirs and assigns, or to such person or persons, and in such manner, as they shall direct or appoint.

Petition for the Appointment of New Trustees of Stock in the Place of a Lunatic (a).

In the matter of a lunatic, and in the matter of an act, &c., *ante*, p. 944.

To the Right Honourable, &c.

The humble petition of [*the committee of the person and estate of the lunatic, and of the parties beneficially interested in stock.*]

SHIEWETH,

That [*Statements—a will creating trusts of stock, and other facts, shewing who were the parties beneficially interested, and the trustees of the funds; that certain sums of stock were then standing in the lunatic's name, and in the name of trustees who had declined to act; the commission of lunacy, and the appointment of a committee of the person and estate.*]

Your petitioners, therefore, humbly pray your Lordship, that it

(a) See *ante*, pp. 499—500.

may be referred to one of the Masters of the High Court of Chancery, to approve of a proper person or persons to be appointed new trustee or trustees under the said will, in lieu of the said deceased trustees and the said surviving trustee, who declined to act as aforesaid, and that such person or persons may be appointed accordingly; and that the said _____ as such committee as aforesaid; and the said [*another trustee*,] may be directed to receive the dividends accrued due on the said sums of [*the stock*;] and that the said [*committee*] may be further directed to receive the dividends on the said sum of [*the stock*;] and that they may be respectively ordered to pay over the same to such new trustees as aforesaid, and also, to transfer the said several sums of [*stock*,] standing in the names of the said lunatic and the said [*other trustees*,] as such surviving trustees as aforesaid, and in the name of the said [*lunatic*] alone, into the names of such new trustees as aforesaid, as trustees under the will of the said [*testatrix*;] and that the costs of this application may be directed to be paid out of the dividends accrued or to accrue due on the said Bank Annuities; or that your petitioners may have such further and other relief as to your Lordship shall seem meet, and the circumstances of their case may require.

And your petitioners shall ever pray, &c.

Order thereon.

That it be referred to the Master in rotation of the High Court of Chancery, to inquire and certify whether the £ [*stock*,] mentioned in the said petition to be standing in the books of the Governor and Company of the Bank of England, are standing in the name of the said lunatic, or vested in him either alone or jointly with any other person or persons, and whom, as a trustee or trustees, upon any and what trust or trusts, and for whom, within the intent and meaning of an act of Parliament made and passed in the first year of the reign of his late Majesty King William the Fourth, entitled “An Act, &c.” [*title, ante*, p. 944;] and whether the said lunatic hath any and what beneficial interest therein, and whether there are any and what incumbrances affecting the same; and in case the said Master shall find the said funds to be standing in the name of the said lunatic alone, as such trustee as aforesaid, or jointly with any other person or persons as trustees, who may be since dead, or who are unwilling or incapable to act in the trusts of the will of the said testatrix _____ mentioned in the said petition; then I do hereby order that the said Master do inquire and certify whether there is any power or authority in, by, or under the said will of the said testatrix _____ to appoint a new trustee or new trustees of the stock or trust funds hereinbefore mentioned, and

by whom and by whose direction such power or authority (if any) has been or ought to be exercised; and whether any and what person or persons have been duly appointed a new trustee or new trustees jointly with the said lunatic, in pursuance of such power or authority, (if any); and whether such person or persons as he may find to have been so appointed, is or are living, and willing and capable to act in the trusts of the said will; but if the said Master shall find that there is no such power or authority in the said will, by virtue whereof a new trustee or trustees can now be appointed in the room of the said [*lunatic*], then I do hereby further order, that he do inquire and certify who is or are the most fit and proper person or persons to be appointed trustee or trustees of the said funds in the room of the said lunatic; and let due notice of attending the said Master be given to the committee of the estate of the said lunatic, and to all other persons interested in the matters aforesaid.

Petition of the Committee and of the Parties beneficially interested in Stock, to confirm the Master's Report, made in pursuance of the preceding Order.

In the matter &c., and in the matter of an act, &c.,
ante, p. 944.

To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That [*Statements—Of the last order of reference—the Master's report finding the several facts, and that the lunatic was a trustee of certain funds within the act of the 1 Wm. 4, c. 60; that he had no beneficial interest therein; that the only incumbrance affecting the said trust fund was an annuity of £ directed to be paid half-yearly to that three of the trustees were dead, and two others unwilling to act; and that the said lunatic had become incapable to act; that there was no power to appoint new trustees, and that the petitioners had proposed two trustees in the room of the lunatic; and the said committee having deposed that they were parties of considerable respectability and some property, and that in his judgment they were proper persons, from their responsibility and knowledge of the parties, to be such trustees, and that they were willing to accept the trust; and that the said Master was of opinion that the two trustees proposed were the most proper persons to be appointed trustees in the room of the lunatic*].

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report, bearing date the day of may be confirmed; and that your Lordship will be pleased to appoint the said [*new trustees*] to be new trustees under the said will of the said [*testatrix*], in lieu of the deceased and unwilling trustees and of the said lunatic, and to discharge the said lunatic and the said [*other trustees*] from the trusts

thereof; and further, to order [*committee,*] as such committee of the said lunatic, to receive dividends which are or shall have become due prior to the transfer after-mentioned on the said sum of £ Bank four *per cent.* Annuities, so standing in the name of the said lunatic alone; and also, as such committee as aforesaid, to concur with the said [*other trustees*] in receiving the dividends, which are or shall have become due prior to their transfer, on the said several sums of [*other stock*] so standing in the names of the said [*lunatic*] and the said [*other trustees,*] as survivors, in a joint account with and in paying over the said dividends to your petitioners, the said [*parties interested;*] and that your Lordship will be pleased further to order the said [*committee,*] as such committee, to transfer, and the said [*other trustees*] to concur in transferring the said three several sums of Bank Annuities lastly hereinbefore mentioned, from the names of the said lunatic and of the said [*other trustees,*] into the names of the said [*new trustees,*] as such new trustees as aforesaid, under the will of the said [*testatrix;*] and that it may be referred to the Taxing Master in rotation of the High Court of Chancery, to tax the reasonable and proper costs and expenses of your petitioners in obtaining the order of the day of [*reference,*] and of the proceedings consequent thereon, and of this application and incident thereto, and also the costs of the said [*committee*] of the said lunatic; and that what the said Master shall certify to be the amount of such costs and expenses, when taxed, may be paid to the solicitors of your petitioners and the said committee by the said [*new trustees;*] and that they may be at liberty to sell so much of the said £ Bank four *per cent.* Reduced Annuities, as they shall find requisite to raise a sufficient sum to answer such payments; and that the proper officers of the Governor and Company of the Bank of England do permit such respective receipts of dividends, transfers, and sales accordingly; or that your Lordship will be pleased to make such other order in the premises as to your Lordship shall seem fit.

And your petitioners shall ever pray, &c.

Order thereon.

That the Master's said report be confirmed; that a proper release and indemnity, or proper releases and indemnities of the said [*lunatic*] and his estate and effects, against any claims arising under the will of the said [*testatrix,*] mentioned in the said report, be given and executed to the said [*lunatic,*] and to [*committee,*] as the committee of his estate, by such of the parties claiming to be entitled to any share or shares, right or interest, under or by virtue of the said will, as under the circumstances

the said Master shall approve; such release and indemnity, or releases and indemnities, to be settled and approved by the Master to whom this matter stands referred, in case the parties differ about the same. And I do think fit, and hereby appoint [*new trustees,*] respectively named in the said report, to be new trustees of the trust funds and premises hereinafter mentioned, in the room of the said [*lunatic*] and the said [*other trustees,*] therein also named. And I do hereby order, that the said [*committee,*] as such committee as aforesaid, do, upon such release and indemnity being given as aforesaid, transfer the £ [*stock*] mentioned in the said report to be standing in the name of the said lunatic alone, in the books of the Governor and Company of the Bank of England; and do also join with the said [*other trustees*] in transferring the £ [*other stock*] mentioned in the said report to be standing in the name of the said [*lunatic*] and the said [*other trustees,*] as survivors in a joint account with both deceased, into the names of the said [*new trustees,*] as such trustees as aforesaid, to be by them respectively held and applied upon the trusts, and to and for the ends, intents, and purposes mentioned, expressed, and declared of and concerning the same, in and by the will of the said [*testatrix*] hereinbefore mentioned. And I do hereby further order, that the said [*committee,*] as such committee as aforesaid, do receive the dividends due and to accrue due on the said £ [*stock*] previously to the respective transfers thereof hereinbefore directed, and to pay the same to [*the tenant for life*] named in the said report. And I do hereby further order, that it be referred to the Taxing Master in rotation of the High Court of Chancery, to tax the reasonable and proper costs, charges, and expenses of the petitioners, and of the committee of the estate of the said lunatic, incurred in and about the obtaining the order made in this matter on the day of last, and of the proceedings consequent thereon, and of this application and incident thereto. And I do hereby further order, that what the said Master shall certify to be the amount of such costs and expenses when taxed, be raised by the said [*new trustees,*] as such new trustees as aforesaid, by sale of a sufficient part of the said £ [*stock,*] when transferred into their names as hereinbefore directed. And I do hereby further order, that the same, when so raised, be paid by the said [*new trustees*] to the solicitors of the said petitioners and of the said committee; and let due notice of attending the said Master be given to the said committee, and to all parties interested.

PETITIONS RELATING TO LUNATIC TRUSTEES AND
MORTGAGEES NOT FOUND SUCH BY
INQUISITION (a).

*Petition for a Reference to the Master, and for the Appointment of
a Person to convey Lands on behalf of a Lunatic Trustee.*

In the matter of [*the trustee,*] a person of unsound mind, not found such by inquisition, and in the matter of an act of Parliament passed in the first year of the reign of his late Majesty King William the Fourth, entitled "An Act for Amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give effect to their Decrees and Orders in certain cases."

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of [*persons beneficially interested.*]

SHEWETH,

That [*Statement of the instruments creating the trusts, and how the legal estate in the property had become vested in the trustee, and the beneficial interest in the petitioners.*]

That the said [*trustee*] is now, and has been for many years past, a lunatic, and in confinement as such in the city of York, but no commission in the nature of a writ *de lunatico inquirendo* has ever issued to inquire of the state of mind of the said [*trustee*].

That your petitioners are desirous of having the legal estate of and in the said hereditaments, which remains vested in the said [*trustee*], conveyed to your petitioners according to their respective interests therein.

Your petitioners, therefore most humbly pray, that your Lordship will be pleased to direct that it may be referred to one of the Masters of the High Court of Chancery, to inquire and certify whether the said [*trustee*], is seised of the said hereditaments as a lunatic, or person of unsound mind, within the intent and meaning of the said act of Parliament, and that a proper person may be appointed to convey the same unto your petitioners, according to their rights and interests therein; or that your Lordship will make such further or other order in the premises as to your Lordship shall seem just.

And your petitioners will ever pray, &c.

(a) See *ante*, pp. 497—500.

to, and the affidavits thereafter stated, had been produced and read before him; and he found [*the will creating the trusts, and the affidavits, were here set forth.*] And upon consideration of the matters thereinbefore set forth, and of what had been alleged before him, touching the same, by the solicitor for the petitioner, the said Master was of opinion, and did find, that the said [*trustee*] was a person of unsound mind, and that he was seised or possessed of the hereditaments and premises comprised in the indenture of

thereinbefore and in the said petition mentioned, jointly with the said petitioner upon the trusts mentioned and declared in and by the will of the said thereinbefore in part set forth concerning the same hereditaments and premises; and that he was such trustee within the intent and meaning of the act of Parliament made and passed in the first year of the reign of his late Majesty King William the Fourth, intituled ‘An Act, &c.’ [*title, ante, p. 951*]; and he found, that the said [*trustee*] had not any beneficial estate or interest in the said hereditaments and premises, or any part thereof. And he also certified, that a proposal had been laid before him on the behalf of the petitioner, whereby [*nominee,*] of Gent., was proposed as a proper person to be appointed on behalf of the said [*lunatic trustee,*] and in his name, to convey and assure the said hereditaments and premises; and that he had considered the said proposal, and did approve thereof; and he did, therefore, find that the said [*nominee*] was a fit and proper person to be appointed on behalf of the said [*lunatic trustee*] being so of unsound mind, and in his name to convey and assure the said hereditaments and premises whereof he was so seised as aforesaid, &c.

Your petitioner, therefore, humbly prays your Lordship, that the Master’s said report, bearing date the day of 184 may be absolutely confirmed, and that [*nominee,*] of, &c., may be directed and appointed by your Lordship, as a fit and proper person on behalf of the said [*lunatic trustee,*] being so of unsound mind, as in the said report mentioned, and in his place, to convey and assure, or join in conveying and assuring, the hereditaments and premises whereof he is so seised as in the said report also mentioned, to the uses, upon the trusts, and for the intents and purposes limited, expressed, and declared of and concerning the same, in and by the said will of the said [*testator* ;] or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioner shall ever pray, &c.

Order thereon upon hearing Counsel for the Petitioner and the Trustee.

That the Master’s said report be confirmed. And I do hereby appoint [*nominee,*] of Gent., in the said report named, in

the place of the said [*lunatic,*] being of unsound mind as therein mentioned, to convey and assure. And I do hereby direct the said [*nominee,*] in the place of the said [*lunatic,*] to convey and assure, and to join with all necessary parties in conveying and assuring, the hereditaments and premises whereof the said [*lunatic*] is found to be seised, as in the said report mentioned, unto the said [*new trustee,*] to the uses, upon the trusts, and for the ends, intents, and purposes, limited, expressed, and declared, of and concerning the same, in and by the will of the said [*testator*] in the said report mentioned.

Petition for a Reference to appoint New Trustees of Stock in the Place of a Lunatic Trustee.

In the matter of [*lunatic trustee,*] a person of unsound mind, not found such by inquisition, and in the matter, &c. *ante*, p. 951.

To the Right Honourable, &c.

The humble petition of [*the parties beneficially interested.*]

SH EWETH,

That [*A will creating the trusts of certain stock was stated.*]

That there is now standing in the name of [*deceased trustees and the lunatic trustee,*] upon the trusts of the said will, the sums of £ [*stock*] hereinafter mentioned, (that is to say), [*the sums should be stated.*]

That the said [*lunatic trustee*] is now of unsound mind, though not found such by inquisition, and incapable of executing the trusts reposed in her by the said will.

That the said several sums of [*stock*] have never been transferred in pursuance of the will of the said testatrix, to the trustees hereinbefore mentioned, but still continue in the name of the said [*lunatic trustee,*] in the books of the Governor and Company of the Bank of England.

Your petitioners, therefore, most humbly pray, that your Lordship will be pleased to direct, that it may be referred to one of the Masters of the High Court of Chancery, to inquire and certify whether the said [*lunatic trustee*] is possessed of the said [*stock,*] as a trustee of unsound mind within the intent and meaning of the said act of Parliament. And also to inquire and certify who is or are the most fit and proper person or persons to be appointed a trustee or trustees in the room of the said [*lunatic trustee,*] in such of the trusts hereinbefore mentioned and set forth, as to which she has become the sole surviving trustee; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

Order thereon.

That it be referred to the Master in rotation of the High Court of Chancery, to inquire and certify whether the said [*lunatic trustee*] is an idiot, lunatic, or of unsound mind ; and in case the said Master shall find the said [*lunatic trustee*] to be an idiot, lunatic, or of unsound mind, then he is to inquire and certify whether she is possessed of the several stocks, funds, annuities, or securities, mentioned in the petition to have been bequeathed by the will of [*testator,*] deceased, therein named, or of any or either, and which, of them, or of any and what part or parts thereof, either alone or jointly with any other person or persons, and whom, as a trustee or trustees, upon any and what trust or trusts, and for whom, within the intent and meaning of the act of Parliament made and passed in the first year of the reign of his late Majesty King William the Fourth, entitled ‘An Act, &c.’ [*title, ante, p. 951.*] And whether the said [*lunatic trustee*] hath any, and what, beneficial interest in the said stocks, funds, annuities, or securities, or in any or either and which of them, or in any and what part or parts thereof, and whether there are any and what incumbrances affecting the same ; and in case the said Master shall find the said [*lunatic trustee*] to be possessed of the said stocks, funds, annuities, or securities, or any or either of them, or of any part or parts thereof alone as such trustee as aforesaid, or jointly with any other person or persons as trustees, who are dead, or are unwilling or incapable to act in the trusts of the said will of the said [*testator,*] then I do hereby further order, that the said Master do inquire and certify whether there is any and what power or authority in, by, or under the said will of the said [*testator,*] to appoint a new trustee or new trustees of the stocks, funds, annuities, or securities hereinbefore mentioned. But if the said Master shall find that there is no such power or authority in, by, and under the said will, by virtue whereof a new trustee can now be appointed in the room of the said [*lunatic ;*] then I do hereby further order, that he do inquire and certify who is or are the most fit and proper person or persons to be appointed trustee or trustees of the said funds in the room of the said [*lunatic trustee.*] And after the said Master shall have made his report, such further order shall be made as shall be just ; and let due notice of attending the said Master be given to all parties interested in the matters aforesaid.

Petition of the Parties beneficially interested in Stock, to confirm the Master's Report as to the Appointment of New Trustees, and for the transfer of Stock, and Payment of Dividends, and the Costs of the Petitioners.

In the matter of, &c., and in the matter, &c., *ante*, p. 951.
To the Right Honourable, &c.

The humble petition, &c.

SHEWETH,

That by an order [*the last reference to the Master.*]

That Esq., the Master in rotation to whom this matter stands referred, made his report, bearing date the day of and thereby certified, that, &c., [*the Master's report finding the party a lunatic; that stock was standing in the name of deceased trustees and the lunatic; and that the same was vested in the lunatic trustee, as surviving trustee under a will, upon the trusts therein contained, for the benefit of the petitioners; that the lunatic was such trustee for the petitioners under the act of Parliament in the said order mentioned; and that the Master did not find that the said lunatic trustee had any beneficial interest therein, nor that there were any incumbrances affecting the same, save and except an assignment to nor that there was any power or authority under the said will to appoint a new trustee; and the Master's opinion, that the persons proposed as new trustees were the most proper persons to be appointed trustees of the stock in the room of the said lunatic.*]

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report may be absolutely confirmed, and that the said [*new trustees*] may be appointed to be new trustees in the place of the said [*deceased trustees and lunatic trustee,*] of the said sum of [*stock,*] so as aforesaid standing in the names of the said [*deceased trustees and the said lunatic trustee;*] and that the Secretary or Deputy Secretary, or Accountant General for the time being, of the Governor and Company of the Bank of England, may be ordered to transfer the said [*stock*] into the joint names of the said [*new trustees,*] upon the trusts, and for the intents and purposes, in and by the said will of the said [*testator*] expressed and declared of and concerning the same; [*or, "and that one of the officers of the South Sea House Company, may join and concur, in the place and in the name of the said [lunatic trustee,] in transferring the said £ South Sea Stock, and £ South Sea Annuities, into the like names, and upon the like trusts."*] And that the dividends now due and hereafter to become due on the said [*stock,*] may be received by the said [*new trustees,*] and paid according to the trusts of the said will of the said [*testator;*] and that it may be referred to the Taxing Master to tax your petitioners their costs and expenses of this application and incident thereto; and that the said

[*new trustees*,] on the said transfer [or "*such transfers*"] being made to them as aforesaid, may, by sale of a competent part of the said [*stock*,] raise the amount of such costs and expenses, when taxed by the said Taxing Master, and pay the same to your petitioners ; or, &c.

And your petitioners, &c.

Order thereon.

That the Master's said report be confirmed. And I do hereby appoint [*new trustees*,] respectively named in the said report, to be new trustees of the trust funds and premises hereinafter mentioned, in the place of the said [*lunatic trustee*.] And I do hereby further order, that the secretary or deputy secretary, or Accountant General or Deputy Accountant General for the time being of the Governor and Company of the Bank of England, do forthwith transfer the [*stock*] now standing in the names of the said [*old trustees and lunatic*,] in the books of the said Governor and Company, by their description of [as in the Bank books,] into the names of the said [*new trustees*,] as such new trustees as aforesaid, to be by them respectively held and applied upon the trusts, and to and for the ends, intents, and purposes mentioned, expressed, and declared, of and concerning the same, in and by the will of the said [*testator*] named in the said report. And I do hereby further order, that the said Secretary or Deputy Secretary, or Accountant General or Deputy Accountant General, or one of the cashiers for the time being of the said Governor and Company of the said Bank of England, do receive the dividends now due and to accrue due on the said [*stock*] previous to the transfer thereof as hereinbefore directed, and pay the same to the said [*new trustees*,] as such new trustees as aforesaid, to be by them respectively applied according to the trusts of the said will. And I do think fit, and hereby further order, that it be referred to the Master to whom this matter stands referred, to tax the petitioners their reasonable and proper costs and expenses of this application, and incident thereto and consequent thereon. And I do hereby further order, that the said [*new trustees*] be at liberty to raise the amount of the said costs and expenses when so taxed, by sale of so much of the said [*stock*] when so transferred into their names as aforesaid, as will be sufficient for the purpose ; and that they do pay the same when so received to the solicitor for the said petitioners (a)

Petition of Persons entitled to the Equity of Redemption of an Estate, for Payment of Mortgage Money, and Assignment of Term.

In the matter of a person of unsound mind, not found such by inquisition, and in the matter, &c. *ante*, p. 951.
To the Right Honourable, &c.

The humble petition, &c., [*two persons entitled to the equity of redemption of an estate mortgaged.*]

SHEWETH,

That by indenture, bearing date, &c. [*a mortgage for 400*l.* and interest was stated.*]

That the said [*mortgagee*] has been for some years past, and now is, a lunatic, and incapable of managing his affairs, and has been for some time, and now is, confined in the York Lunatic Asylum, but no commission of lunacy has issued against him.

That the said [*mortgagee*] is a bachelor, and of, &c., is his brother and sole next of kin; and during the lunacy of the said [*mortgagee*,] the said [*brother*] has managed the affairs of the said [*mortgagee*.]

That the interest upon the said mortgage debt of 400*l.* was paid to the said [*mortgagee*] until his lunacy, and since his lunacy the same has been paid to the said [*brother*] for the use of the said [*mortgagee*], and has been applied for his maintenance.

That the principal and interest now due to the said [*mortgagee*,] on the said mortgage security, is considerably less than 700*l.*

That your petitioners are desirous of paying off the principal and interest due on the said mortgage security, and of having the legal estate therein for the residue of the said term of 2000 years, now vested in the said [*mortgagee*,] re-assigned to them; and, for that purpose, that the said [*brother*,] or such other person as your Lordship may approve, may be appointed to receive the principal and interest due on the said mortgage, and to re-assign the legal estate in the said hereditaments and premises, for the remainder of the said term of 2000 years, under and by virtue of the powers in that behalf contained in the said act of Parliament.

Your petitioners, therefore, humbly pray your Lordship that it may be referred to one of the Masters of the High Court of Chancery, to inquire and certify whether the said [*mortgagee*] is a mortgagee of the said hereditaments and premises, within the intent and meaning of the said act of Parliament, and to approve of a proper person to convey or assign the same premises, and to receive the principal and interest due on the said mortgage, in the name and on the behalf of the said [*mortgagee* ;] or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship may seem meet.

And your petitioners will ever pray, &c.

Order on Petition for Payment of Money due to Lunatic Mortgagee.

That it be referred to the Master in rotation of the High Court of Chancery to inquire and certify whether the said A. B. is a lunatic, or person of unsound mind, and in case the said Master shall find the said A. B. to be a lunatic, or person of unsound mind, then he is to inquire and certify whether he is seised or possessed of the hereditaments and premises mentioned and comprised in the indenture of the day of in the said petition stated or of any and what part thereof, either alone or jointly with any other person or persons, and whom as a trustee or trustees upon any and what trust or trusts, or by way of any and what mortgage, and for whom within the intent and meaning of the act of Parliament, made and passed in the first year of the reign of his late Majesty King William the Fourth, intituled, An Act, &c., *ante*, p. 951. And whether the said A. B. has any and what beneficial estate or interest therein, and in case the said Master shall find the said A. B. to be a mortgagee of the said hereditaments and premises within the intent and meaning of the said act of Parliament, then I do hereby further order that the said Master do inquire and certify the amount remaining due for principal and interest in respect of the said mortgage, and whether the said A. B. is entitled thereto, or to any, and what part thereof in his own right and for his own benefit, or in trust for any person or persons, and whom and also who is or are entitled to the equity of redemption in the said mortgaged hereditaments. And in case the said Master shall find the said A. B. to be entitled to the said principal and interest, or to any part thereof in his own right and for his own benefit, and the amount to which he may be entitled does not exceed 700*l.*, then the said Master is to inquire and certify who is or are the most fit and proper person or persons to be appointed in the place of the said A. B., being lunatic or of unsound mind as aforesaid, to receive the amount to be so found due to him, and is also to settle and take security from the person or persons whom he may so approve of for the due application of the principal money and interest to which the said A. B. may be so entitled. And I do hereby further order that the said Master do also approve of some fit and proper person to be appointed in the place of the said A. B., to convey and assign the hereditaments and premises of which he may be found to be such mortgagee as aforesaid, and after the said Master shall have made his report, such further order shall be made as shall be just. And let due notice of attending the said Master be given to all parties interested in the matters aforesaid.

Petition to confirm Master's Report, finding a Mortgagee beneficially interested, to be of unsound Mind, and appointing a Person to receive the Mortgage Money, and to convey on his behalf.

In the matter of [*mortgagee*,] a person of unsound mind, but not found such by inquisition, and in the matter of an act, &c., *ante*, p. 951.

To the Right Honourable, &c.

The humble petition of [*two persons entitled to the equity of redemption of an estate mortgaged*.]

SHEWETH,

That, by an order made by your Lordship in this matter, bearing date the day of upon the petition of the above-named petitioners, it was ordered, &c. [*The order was stated*.]

That Esq., the Master in rotation to whom this matter stands referred, by his report, bearing date the day of certified that he had been attended by the solicitor of the petitioners, and he found, by the affidavit of sworn the day of last, and the affidavit of also sworn on the said day of last, that the said [*mortgagee*] was of unsound mind. And that, by an indenture, bearing date the day of and made between, &c. [*The mortgage deed was here stated, and also the will of the mortgagor, devising the equity of redemption to the petitioners, and finding of the Master*.]

Your petitioners, therefore, humbly pray your Lordship, that the Master's said report may be absolutely confirmed, and that the said [*brother*] may be appointed to receive the said sum of 428*l.* on behalf of the said [*mortgagee*,] and to convey or assign the said hereditaments and premises in the name and on the behalf of the said [*mortgagee*] to your petitioners, or in trust for them, or as they may direct; and that on payment of the said mortgage money and interest to the said [*brother*,] he may be ordered to convey or assign the said premises in the said report mentioned, unto and to the use of the said [*the petitioners*,] their heirs and assigns, or unto such person or persons, and in such manner, as they may direct or appoint; and that it may be referred to the Taxing Master in rotation of the High Court of Chancery to tax the costs and expenses of your petitioners incurred by this application and the former petition, and by the said reference and incidental thereto; and that your petitioners may be at liberty to retain such costs and expenses out of the said sum of 428*l.*; or that your Lordship will be pleased to make such further or other order in the premises as to your Lordship shall seem just.

And your petitioners will ever pray, &c.

Order made on Petition to confirm the Master's Report in a case similar to the last.

I do think fit and hereby order that the Master's said report be confirmed, and it appearing to me by the said report that the said is a person of unsound mind, and that she is alone possessed of the freehold messuage, &c., in the said report stated, by way of mortgage, within the intent and meaning of the act made and passed in the first year, &c. (see title of act, *ante*, 951,) and that she is beneficially entitled to the sum of £ and interest remaining due on such mortgage, and that the said petitioners (*names*), as assignees of the estate of W. T., a bankrupt, are entitled to the equity of redemption in the said mortgaged premises, subject to a mortgage to S. R. for receiving £ and interest. I do think fit and do hereby appoint [*nominee*] in the said report named in the place of the said [*lunatic*,] being of unsound mind, to receive the said mortgage money and interest, after the deduction of the costs and expenses hereinafter mentioned and to convey. And I do direct that the said petitioners be at liberty to deduct from the sum of £ certified by the said Master to be remaining due for principal and interest on the said mortgage, the amount of the costs and expenses hereinafter directed to be taxed, and that on payment of the residue of the said mortgage-money and interest, together with any further interest which may accrue on the said mortgage, the said [*nominee*] do, in the place of the said lunatic, being of unsound mind as aforesaid, reconvey the aforesaid mortgaged hereditaments to the said as such assignees as aforesaid, freed and discharged of and from the said principal sum of £600 and interest, but without prejudice to the mortgage to hereinbefore mentioned, such reconveyance to be settled by the said Master, in case the parties differ about the same, in which case let due notice of attending the said Master be given to all parties interested. And I do hereby further order that it be referred to the Taxing Master in rotation of the High Court of Chancery, to tax the reasonable and proper costs and expenses of the said petitioners, incurred in and about the order of reference in this matter, dated the day of 184 , and of the proceedings consequent thereon; and of this application and incident thereto and consequent thereon, excepting the costs of the reconveyance, which are to be paid by the said petitioners.

Petition to confirm the Report of the Master in Lunacy, made in pursuance of the Lord Chancellor's order, under 8 & 9 Vict. c. 100, s. 95, see ante 221—223, 879, 880.

In the matter of A. B., a lunatic, and in the matter of an Act of Parliament passed in the session held in the 8th and 9th

years of the reign of Queen Victoria, entitled "an Act for the regulation of the care and treatment of Lunatics."

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of _____ nephew and one of the next of kin of the said lunatic, on behalf of himself and also of [names] four others of the next of kin of the said lunatic.

Sheweth that _____ Esq., one of the Masters in Lunacy, by his report bearing date the 20th day of June, 1846, certified, that in pursuance of the general orders in lunacy, it had been proposed before him on the part of [nephew] hereinafter mentioned, that he should be appointed guardian of the person, and receiver of the estate of the said lunatic, and that the whole of her income should be allowed for her maintenance and support, and in support of such proposal the following evidence had been read before him, viz., the office copy of an affidavit of the said [nephew,] sworn the 25th day of March, 1846, and the *vivâ voce* examination of _____ of _____ House _____ in the county of _____ surgeon, and of _____ of _____ of the same place, doctor of medicine, and _____ of the same place, attendant on the said lunatic, severally taken before him and reduced into writing on the 11th day of April, 1846, and also the two several like examinations of the said [nephew] respectively, taken before him and reduced into writing, on the 20th and 24th days of April last, his certificate or report in this matter dated 11th April, 1846, and your lordship's order dated 25th May, 1846, confirming the same: an affidavit of _____ of _____ [other affidavits are referred to.] And that he had been attended by the solicitors for the said [nephew and other next of kin,] who he thereafter found were the only next of kin of the said lunatic, and which said E. M. he thereafter found to be the heiress-at-law of the said lunatic, and that he had in the presence of the parties so attending before him considered such proposals, and read and considered such evidence. The said Master found that by his report in this matter, dated 11th April, 1846, he certified that he was satisfied that the said L. M. was a lunatic, and not sufficient for the government of herself or her estate, and he found that such report was confirmed by your lordship's order in this matter, dated 25th May, 1846, and he found that the said L. M. was the daughter of J. M. and _____ his wife, and that the said J. M. died many years since, leaving the said _____ his wife him surviving, and that she died many years since, and that they were never married except the one to the other, and he found that they had issue six children and no more, viz., [names.] And he found that the said J. M., the son, died a bachelor, in 1824, and that the said mother died in 1821, having issue one child and no more, viz., the said E. M. [Other facts as to the state of the family were then set out.] And he found that the said L. M. the lunatic, had never been married and that the

said C. M. is dead unmarried. And he found that the said E. M. was the heiress-at-law, &c., see *post*, p. 964 *d.* And he found that her unsoundness of mind shewed itself by, &c. [*the delusion was here set forth.*] And as to the guardianship and receivership he found that the said was her nephew, and resided in aforesaid, and that he was in the opinions of the said [*two persons who had made affidavits*] who he found had respectively been intimately acquainted with him for two years and upwards, as a person of respectability and integrity, and fit and proper to be appointed the guardian of the person and the receiver of the estate of the said lunatic, and the said Master was of opinion that the said [*receiver,*] who had personally appeared before him, expressed his readiness in that behalf, and to visit the said L. M. from time to time, and to give such security as might be necessary, was the most fit and proper person, &c. (see order *post*, p. 964 *d.*)

And the said Master found that the said [*lunatic*] had been maintained in such manner, and at such expense, and by such parties, and at such places as aforesaid, up to the said day of and the said Master was of opinion, that regard being had to the circumstances and estate of the said lunatic, it was fit and proper that the whole of her income should be allowed for her maintenance and support, and that such allowance should commence from the said day of 1846. That your petitioner having been approved of by the said Master in his said report, is desirous of being appointed the guardian of the person and receiver of the estate of the said [*lunatic.*]

Your petitioner, therefore, humbly prays your Lordship that the said report of Esq., dated the day of 1846, may be absolutely confirmed, and that your petitioner may be appointed the guardian of the person, and receiver of the estate of the said [*lunatic*] upon your petitioner giving such security as may be necessary, and that the said and surviving executors of the will of deceased, may be at liberty to transfer the said sum of £ 3¼ *per cent.* Bank Annuities standing in the names of deceased and in the books of the Governor and Company of the Bank of England, into the name of the Accountant General of the Court of Chancery, to the credit of this matter, together with the dividends that may have accrued due thereon, and that such dividends, together with all future dividends to accrue thereon, may be paid to your petitioner, to be applied by him towards the care, maintenance, and support of the said lunatic, and that the said may be at liberty to pay into the like account the said sum of £ cash in his hands, and also that it may be referred to the Taxing Master of this honourable Court in rotation, to tax the costs, charges, and expenses of your petitioner, of and incidental to this application, and also of all other the next of kin appearing

hereon ; the amount thereof to be certified by the said Taxing Master, and that what the said Taxing Master shall so certify to be the amount of the said costs, charges, and expenses, be paid out of the said sum of £ cash.

Order thereon.

Whereas, Esq., one of the Masters in Lunacy made his report to me in the above matter, bearing date the 20th day of June, 1846, whereby he found that E. M. was the heiress-at-law of the said L. M., and that the said E. M., together with [*five others,*] in his report described were the only next of kin of the said lunatic, and the only persons who would be entitled to her estate, or to shares thereof under the statute for the distribution of intestates' estates in case she were then dead intestate. And as to the situation and nature of the lunacy of the said L. M., he found she was a single woman, and was of the age of sixty years or thereabouts, and that she resided with her mother at in the county of until her death in the year 1836, when he found that she was placed at House, near an asylum for the reception of persons of unsound mind, and he found she remained there until the day of 1846, when he found she was removed to house also an asylum for the reception of persons of unsound mind, where he found she had ever since been, and was then. And after stating the nature of the unsoundness of mind of the said L. M., the said Master certified his opinion that her nephew, who resided in in the county of was the most fit and proper person to be appointed guardian of the person and receiver of the estate of the said L. M. And as to the fortune of the said L. M., he found she was entitled absolutely to a sum of £60 cash, in the hands of of solicitor, a balance of a sum of £300, and to a sum of £800, three and a quarter per cent. Bank Annuities, standing in the names of [*names*] as executors of the will of [*testatrix*] deceased. And he found that the said L. M. became entitled to such stock in the year 1836, on the death of her said mother, who had a life interest therein. And he found that the interest on such stock up to and including the day of 1845, had been paid by such trustees towards her maintenance and support at house as therein-after stated, but that they had declined, without some authority to protect them in so doing, to apply for her support, the interest which had since accrued on such sum of stock. And he found that there was then belonging to her one year's interest on such stock on the 5th April last, amounting to £ but subject to income tax. And he found the said L. M. became entitled absolutely, on the death of her said mother in 1836, to certain monies under the marriage settlement of, &c. [*particulars*

were set forth.] And he found that the fortune of the said [lunatic] consisted of the said £60 in the hands of the said [solicitor] and of the said £800, three and a quarter per cent. Bank Annuities, with the said dividends thereon since the said day of 1845, and also consisted of her share of the said settlement, with such interest as aforesaid, since the death of her said mother. And he found that the income of the said fortune of the said [lunatic] consisted of the annual sum of £27 (being the interest on the said £ three and a quarter per cent. Bank Annuities, but subject to a deduction for income tax) and also consisted of the interest on such share as she should be declared in the said suit entitled to in the said £1500 so secured on mortgage, at £5 per cent. as aforesaid. And as to the maintenance of the said [lunatic] he found that up to the death of her said mother, she resided with and was maintained by her. And that from her death to the said day of 1846, she resided at House aforesaid, and was there maintained by payment of the interest on the said £ three and a quarter per cent. Annuities as aforesaid, and by contributions of her family, and by payment by the said [solicitor], out of the said £300, and that since the said day of 1846, she had resided at House aforesaid, where he found she then was; and he found that the proprietors of House, agreed to maintain her for a sum of £50 a year, exclusive of clothes, and it had been proposed before him that the whole of her income should be allowed for her maintenance and support, to be applied as far as it would go according to the following scheme (the members of her family, and some of her friends having arranged to make up the difference), namely—

For her board, lodging, and medical attendance	.	£50
Clothes and incidental expenses	.	10
		<hr/>
		£60

And the said Master found that the said [lunatic] had been maintained in such manner, and at such expense, and by such parties, and at such places as aforesaid, up to the day of 1846. And the said Master was of opinion that regard being had to the circumstances and estate of the said [lunatic] it was fit and proper that the whole of her income should be allowed for her maintenance and support, and that such allowance should commence from the said day of 1846. And whereas the said [*five names*] having preferred their petition to me, praying that the said report might be confirmed, and that the petitioner might be appointed guardian of the person, and receiver of the estate of the said [lunatic] upon giving such security as might be necessary, and that [*the prayer of the petition is here set forth.*] Now, upon hearing the said petition, and the said Master's report, bearing date the day of 1846, I do think fit, and do hereby order that the said report be confirmed, and I do think fit, and do hereby

appoint the nephew of the said [*lunatic*] to be the guardian of her person, and do also appoint the said upon his giving the security hereafter directed, (*a*) to be the receiver of the rents, profits, and produce of her estate respectively for the time to come until further order. And I do hereby direct that the said do give security, to be allowed of by the Masters in Lunacy, jointly or severally, and taken before a Master extraordinary in the country, if there shall be occasion, duly and annually to account for what he shall receive in respect of the said estate of the said [*lunatic*] and pay the same as I shall direct; and I do hereby further order that the balances which the said Masters shall jointly, or severally certify to be due from the said [*receiver*] on passing his accounts, as such receiver as aforesaid, be paid by him, within such time as the Masters in Lunacy shall jointly or severally fix for that purpose into the Bank, with the privity of the Accountant General of the Court of Chancery, to the credit of the matter of L. M.; and the said Accountant General is to declare the trust thereof accordingly. And I do hereby further order that the said balances when from time to time paid in, as and when the same shall amount to a competent sum be laid out in the purchase of Bank £3 *per cent.* Annuities in the name and with the privity of the said Accountant General, to the credit of the said matter, and he is to declare the trust thereof accordingly, subject to further order. And I do hereby further order that the dividends, from time to time to accrue on the said Bank Annuities when so purchased, and all accumulations of dividends be also, from time to time, as and when the same shall amount to a competent sum laid out in the purchase of like Bank Annuities, in the name and with the privity of the said Accountant General, to the credit of the said matter, and he is to declare the trust thereof accordingly, subject to further order. And I do hereby further order that [*name*] as the surviving executors of the will of [*testator*] deceased be at liberty to transfer the sum of £ Bank three pounds and five shillings *per cent.* Annuities into the name, and with the privity of the said Accountant General to the credit of this matter, and he is to declare the trust thereof accordingly, subject to further order. And I do hereby further order that [*solicitor*] be at liberty to pay the sum of £60 cash in his hands belonging to the estate of the said [*lunatic*] into the Bank, with the privity of the said Accountant General, to the credit of the said matter, and he is to declare the trust thereof accordingly. And I do hereby further order that the same, when so paid in, be laid out in the purchase of Bank £3 *per cent.* Annuities, in the name and with the privity of the said Accountant General, to the credit of the said matter, and he is to declare the trust thereof accordingly, subject to further order. And I do think fit and hereby further order, that the whole of the income of the said [*lunatic*] be, after payment of the costs hereafter mentioned, allowed for her maintenance and

(*a*) See form of Recognizance, *post*, p. 969, (*i*).

support, from the day of 1846, and for the time to come until further order. And I do hereby further order that [names] as such surviving executors as aforesaid, do after the said [receiver] shall have perfected his security as such receiver as aforesaid pay to the said [receiver] the dividends which have already accrued (if any) and may accrue on the said Bank Annuities previous to the transfer thereof to be by him applied in part discharge of the allowance for the maintenance and support of the said [lunatic.] And I do hereby further order that upon production of the Master's certificate allowing the security of the said [receiver] as such receiver as aforesaid, the said Accountant General do pay to the said [receiver] the dividends from time to time to accrue on the said £ three pounds five shillings *per cent.* Annuities after the transfer thereof aforesaid, and also on the Bank Annuities to be purchased with the said sum of £60 cash, as and when such dividends shall respectively become due and payable, to be by the said [receiver] applied in the maintenance and support of the said [lunatic.] And I do think fit and hereby further order that it be referred to the Taxing Master of the High Court of Chancery in rotation, to tax and certify the reasonable and proper costs, charges, and expenses of the said petitioners, and of the said (E. M.) one of the next of kin of and incident to the proceedings in this matter, including this application and consequent thereon. And I do hereby further order that the said costs, charges, and expenses respectively when so taxed, be paid by the said [receiver] out of the income of the said lunatic after making due provision for her maintenance and support, and he is to be allowed the same on passing his accounts before the Masters in Lunacy, and for the purposes aforesaid, &c. And let due notice, &c.

Report of Commissioners in Lunacy, under 8 & 9 Vict. c. 100, s. 94, ante, pp. 221, 688.

In the matter of A. B., a private patient in [name] asylum.

Report from the Commissioners in Lunacy, under the act 8 & 9 Vict. c. 100, s. 94.

Office of Commissioners in Lunacy, 19, Spring Gardens, 17th March, 1846.

MY LORD—We, the Commissioners in Lunacy, beg to report to your Lordship that having been informed that A. B. was confined as a lunatic, and that she was entitled to property, the income of which could not, by reason of her insanity, be appropriated to her maintenance, we directed two of the members of our body to inquire into the state of mind of the said A. B. Accordingly, on the 14th day of February last, Dr. and Mr. visited the house licensed for the reception of lunatics at in which the said A. B. was and still is confined, and carefully examined her,

and they have since reported to us that she is decidedly of unsound mind, and is subject to various delusions. We are informed that the said A. B. is entitled to a capital sum of £ (*certain stock*). (*The particulars of the property to be set out. In this case the lunatic was entitled to certain stock, and to another, a small sum of stock under her late husband's will, in the hands of the sole executor.*) That the said executor has applied at the Bank of England to receive the dividends of the said sum of £ stock, in order to apply the same to the maintenance of the said [*lunatic,*] but he has been informed that the stock and dividends could be paid over only to the said [*lunatic*] herself. Upon receiving this information [*the executor,*] who states that he has no fund in his possession applicable to the lunatic's benefit, except the dividends of the said sum of £ or thereabouts, applied to us to make inquiries as to the state of [*lunatic's*] mind, and to report thereon to your Lordship. And accordingly we make this present report to your Lordship, pursuant to the 94th section of the act, 8 & 9 Vict. c. 100, and with the view of enabling your Lordship to make such orders for applying the dividends of the said sum of £ [*stock*] for the maintenance and benefit of the said [*lunatic,*] and to take such other measures in reference to her, and to her property, as your Lordship may deem expedient. ^

————— ASHLEY, *Chairman.*

By order of the Board.

To the Right Honourable the Lord Chancellor, &c. &c.

The Lord Chancellor's Order in pursuance of the preceding Report.

Upon reading a report from the Commissioners in Lunacy, dated the 17th day of March, 1846, in which they state that the dividends arising from the sum of £ [*stock,*] being the property of the said [*lunatic,*] who is confined as a lunatic in a house licensed for the reception of lunatics, called [*name*] House, situate at in the county of cannot be applied for her maintenance and benefit without my order. And in exercise of the authority to me for this purpose given, by an act for the regulation of the care and treatment of lunatics, I do hereby direct that one of the Masters in Lunacy shall personally examine the said [*lunatic,*] and shall take such evidence, and call for such information, as to such Master shall seem necessary, to satisfy him whether the said [*lunatic,*] is a lunatic, and shall afterwards report to me thereon. Dated this day of March, 1846.

LYNDHURST, C.

When the Master has made his report in pursuance of the last order, a petition must be presented to confirm it; after such confirmation, the proceedings will be the same as when the case originates with a petition. See *ante*, pp. 223—226, 879, 880.

Form of Recognizance entered into by Receiver of Lunatic's Estate appointed under Statute 8 & 9 Vict. c. 100, s. 95, see ante, pp. 221-223, 966f, 967g.

S. C. [*the guardian*] of in the county of [*names and descriptions of two sureties*] before our Lady the Queen in her Court of Chancery personally appearing do acknowledge themselves and each and every of them doth acknowledge himself to owe to Francis Barlow, Esq., and Edward Winslow, Esq., the Masters in Lunacy, the sum of £ of good and lawful money of Great Britain to be paid to the said Francis Barlow and Edward Winslow, or to one of them or to their or one of their executors or administrators. And the said [*receiver and sureties*] are willing and do agree and each and every of them is willing and doth agree for himself, his heirs, executors, and administrators, that the said sum of £ shall be levied, recovered, and received of them and each and every of them, and each and every of their heirs, executors, or administrators, and of and from all and singular the manors, messuages, farms, lands, hereditaments, and premises, goods and chattels of them, and each and every of them wheresoever the same shall or may be found. Witness our Sovereign Lady Victoria by the Grace of God of Great Britain and Ireland, Queen Defender of the Faith, at Westminster, this day of in the 10th year of our reign, and in the year of our Lord, 1846.

WHEREAS The Right Honourable the Lord High Chancellor of Great Britain did by an order made in the matter of [*spinster*], a lunatic, and in the matter of an act of Parliament passed in the session held in the 8th and 9th years of the reign of her present Majesty, intituled "An Act for the Regulation of the Care and Treatment of Lunatics," such order bearing date the 29th day of July, 1846, appoint the said S. C. therein named, the nephew of the said [*lunatic*] to be the guardian of her person, and did also appoint the said [*receiver*], upon his giving security thereafter directed to be the receiver of the rents, profits, and produce of her estate respectively for the time then to come, until further order. And his Lordship did thereby direct that the said [*receiver*] should give security to be allowed of by the Masters in Lunacy, jointly or severally, and taken before a Master extraordinary in the country, if there should be occasion duly and annually to account for what he should receive in respect of the estate of the said [*lunatic*], and pay the same as the said Lord Chancellor should direct. And whereas Esq., one of the said Masters in Lunacy, hath approved of the said [*two sureties*] as the sureties for the said [*receiver*], and hath allowed of this recognizance as a proper security, as testified by his signing his name and allowance in the margin hereof. Now, the condition of this obligation is such that in case the said [*receiver*] shall carefully provide for the person of

the said [*lunatic*], and for her safety during the continuance of his office of guardian of the person of the said [*lunatic*], and shall duly and annually account for all and every such sum and sums of money as he shall receive in respect of the rents, profits, and produce of the estate of the said [*lunatic*] respectively, and in case the said [*receiver*], his heirs, executors, or administrators, shall well and duly pay all and every such sum and sums of money as the said [*receiver*] shall so receive as the said Lord Chancellor shall direct, then, this recognizance is to be null and void, or otherwise is to be and remain in full force and virtue.

Taken and acknowledged by the
above named
at

I allow this recognizance

[*Master's signature.*]

FORM OF LEASE OF LUNATIC'S ESTATE.

THIS INDENTURE made the day of A.D. 184
between A. B. of a lunatic, of the first part, and C. D.
of the committee of the estate of the said A. B., of the
second part, and E. F. of of the third part. WHEREAS,
by an inquisition taken on the day of February under a
commission in the nature of a writ *de lunatico inquirendo* duly
issued for that purpose, the said A. B. was found and declared to
be a person of unsound mind, and not competent for the manage-
ment of himself or his property. *And whereas*, by letters patent,
dated the day of 184 the custody of the estate
of the said A. B. was granted to the said C. D. *And whereas* the
said A. B. is seised of or absolutely entitled to an estate of inheri-
tance in fee simple in possession, to such part of the pieces or
parcels of land, and the cottages, shops, stable, and buildings
standing and being thereon hereinafter particularly described and
intended to be hereby demised as are of freehold tenure, and the
said A. B. is also seised to him and his heirs, according to the
custom of the manor of in the county of of such
part of the said premises as is of copyhold tenure. AND WHEREAS
in pursuance of the general orders in lunacy Esq., one of
the Masters in Lunacy, by his report made in the matter of the
lunacy of the said A. B., and dated the day of cer-
tified that he had settled and approved of these presents, the draft
whereof had been laid before him, and left in the office of the said
Masters in Lunacy. *And whereas*, by an order made in the matter
of the said lunacy, and dated the day of 184
the said Master's said report was confirmed; and it was ordered
that the said C. D., as the committee of the estate of the said
lunatic should be at liberty to grant this present lease, and that
upon the Masters in Lunacy jointly or severally signing their or
his allowance of these presents, the said C. D. should as such com-
mittee as aforesaid, and in the name and on the behalf of the said
A. B., execute the same upon the said E. F. executing a counterpart
thereof, *And whereas* the said [*Master in Lunacy*] in pursuance of
the said order hath signed his name in the margin of the first skin
of these presents, and his name and allowance in the margin of the
second and last skin hereof. *Now this indenture witnesseth*, that in
pursuance of the hereinbefore recited order of the day of
184 and by virtue of the act of Parliament made and passed in
the first year of the reign of his late Majesty King William the
Fourth, intituled "An Act for consolidating and amending the

Laws relating to Property belonging to Infants, Femes Covert, Idiots, Lunatics, and Persons of Unsound Mind," and also in pursuance and by virtue of a license for that purpose had, and obtained from the lord of the said manor of to demise such part of the said premises as is of copyhold tenure, and in consideration of the rent, covenants, conditions, and agreements hereinafter reserved and contained, and by and on the part of the said E. F., his executors, administrators and assigns to be paid, kept, done, and performed, the said A. B. acting by the said C. D. as such committee as aforesaid, hath granted, demised, leased, set, and to farm let, and by these presents doth grant, demise, lease, set, and to farm let, unto the said E. F., his executors, administrators, and assigns, all [*the parcels,*] together with all ways, &c.

To have and to hold the said pieces or parcels of land, &c., and premises hereby demised unto the said E. F., his executors, administrators, and assigns, from the day of for and during and unto the full end and term of twenty-one years thence next ensuing, and fully to be complete and ended, yielding and paying therefore yearly and every year during the said term, the rent or sum of £ of lawful British money, by even and equal quarterly payments on the days following, (that is to say) the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, without making any deduction or abatement out of the same or any part thereof, the first of the said payments to begin and be made on the 25th day of December now next ensuing. And the said E. F. doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with, and to the said A. B., his heirs and assigns, in manner following, (that is to say), That, &c., [*The lessee's covenants follow here.*] The power to view the premises in reference to repairs, was reserved to the said A. B., his heirs and assigns, and the said C. D., or other the committee of the said estate of the said A. B. for the time being, and their respective surveyors or agents, &c. Provided always, &c. [*The power of re-entry for breach of the covenants was reserved to the said A. B., his heirs or assigns, or the committee for the time being of his estate.*] And the said A. B. acting by the said C. D., so far only as he is authorized by the aforesaid act of Parliament, and the said recited order of the day of 184 but not further or otherwise (a). Doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said E. F., his executors, administrators, and assigns, that he the said E. F. his executors, administrators, or assigns, paying, &c., [*the usual covenant for quiet enjoyment without interruption*] "of from or by the said A. B., his heirs or assigns, or any other person or persons claiming

(a) It is conceived that the committee, like a person acting under a power of attorney, can only be required to covenant in the name of his principal, the lunatic. See 5 East, 148; 5 Esp. 228; 1 Camp. N. P. C. 337; 1 Ry. & Mood. 229; 1 Moore, 270; 1 Mann. & Ryl. 614; 2 Taunt. 375; 3 Barn. & Ald. 47.

or to claim by, from, under, or in trust for him or them, or any or either of them. In witness whereof the said [*committee*,] by virtue of the said act of Parliament, and in obedience to the order of the said Lord Chancellor, bearing date the day of in the above written indenture severally referred to and recited, have to these presents, as the committee of the estate of the said [*lunatic*,] and in his place and on his behalf, subscribed the name and set the seal of the said [*lunatic*,] on the day and year first above written.

The mode of Execution is as follows :

A. B. [*the lunatic*, by C. D. [*the committee*.]

Memorandum signed by the Master.

I approve of and allow this indenture of lease, as contained in this and the preceding skin of parchment. As witness my hand, this day of

[*Master's signature.*]

Attestation indorsed.

Signed, sealed, and delivered, by the within-named [*committee*,] as the committee, and in the name and on the behalf of the within-named [*lunatic*,] in the presence of us.

ANSWER IN CHANCERY.

Of a Lunatic and his Committee, to a Bill filed for the Specific Performance of an Agreement (a).

The joint and several answer of A. B. [*the lunatic*,] by C. D., his committee and guardian, and of C. D. and E. F., defendants to the bill of complaint of G. H. and I. K., complainants.

These defendants now and at all times hereafter, saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary to make answer unto, they, these defendants, severally answering, say—

(a) See *ante*, p. 557. The commencement of bills filed on behalf of lunatics, will be found in Equity Draftsman, Vol. 1, p. 4, 2nd ed.

And first, this defendant [*lunatic,*] by his said committee and guardian, saith, that by a commission in the nature of a writ *de lunatico inquirendo*, issuing under the Great Seal of Great Britain, and bearing date the day of May directed to certain commissioners therein named, to inquire whether this defendant was a lunatic or not, this defendant was found a lunatic from the day of May, and the care and custody of this defendant's estate was, by the Lord Chancellor of Great Britain, granted to this defendant's [*committee*]; and which said commission of lunacy is now in full force.

And this defendant, by his said committee and guardian, further saith, that the contract in the said complainants' bill mentioned and alleged to have been made and entered into by this defendant, appears by the said complainants' bill to bear date subsequent to the time when this defendant has been found to be a lunatic by virtue of the said commission of lunacy; and this defendant [*lunatic,*] by his said committee and guardian, submits, that by reason of his unhappy state of mind, he was, at the time of the alleged contract, incapable of judging with any sound discretion upon the disposition of his property, or any transactions of business; and that he was open and liable to be imposed upon by any artful persons who would humour the particular topic that dwelt upon this defendant's mind.

And this defendant [*lunatic,*] by his said committee and guardian, submits himself to the protection of this Honourable Court, and that he ought not to be compelled specifically to perform the said alleged agreement for the sale of the said estates. And these defendants, C. D. and E. F., severally say, they believe that the said [*lunatic*] was seised in fee of the freehold and copyhold estates and premises in the complainant's bill mentioned, but these defendants severally say, they do not know or believe that the said [*lunatic,*] when of sound mind, was desirous to sell or dispose of the same, or any part thereof.

And these defendants, C. D. and E. F., severally say, they believe that the said [*lunatic*] has unfortunately for several years past, and long before the day of [*date of the contract,*] laboured under a deranged state of mind, by which he has been so severely afflicted, as to be incapable, as these defendants believe, to conduct his affairs, and regulate his property in a rational manner.

And these last-named defendants severally say, they believe that the said complainant, G. H., was, on and previous to the day of [*date of the contract,*] well acquainted with the said insane state of mind of the said lunatic. [*Here followed the defendants' answer to other parts of the bill in the usual way, without reference to the lunacy.*]

And these defendants, C. D. and E. F. severally say, that at the time of the said [*lunatic's*] executing the said contract, he was a person of insane mind, and that he was not in the full possession of all

his senses or faculties, but, on the contrary, laboured under an imbecility of mind that rendered him easy to be imposed upon, and incapable of managing his property, and such he has been found to be under and by virtue of the said commission of lunacy.

And these defendants, C. D. and E. F., submit, that the said [*lunatic*] being a lunatic and of unsound mind, and incapable of governing his property at the time of entering into the said contract, the same is void, and ought not to be carried into execution.

And further, these defendants severally submit, that if the said lunacy and unsoundness of mind of the said [*lunatic*] did not avoid the said contract, the same ought not to be enforced in a Court of equity, by reason that the said [*lunatic*] was imposed upon and deceived in respect of the person treating with him, and was prevailed upon to agree to sell the said estate and premises, which he never would have done if he had known the said J. K. to have been the purchaser. [*Denial of combination, &c.*]

FEES AND COSTS IN LUNACY.

Table of Fees taken in the Masters in Lunacy Office.

	£	s.	d.
For every summons	0	3	0
For drawing every report, exclusive of schedules, and exclusive of the fee on signing, per folio	0	1	0
For drawing schedules to reports	0	0	6
On signing every report and certificate	1	0	0
For investigating every title to be settled, and perusing the abstract thereof, upon the first 25 folios thereof	0	6	8
And upon every succeeding 25 folios thereof	0	3	4
For every advertisement	1	1	0
Upon every peremptory advertisement for the sale of property, with the approbation of the Masters, in addition to the foregoing fee, to be repaid, if the property shall not be offered for sale	3	0	0
For signing the allowance of every deed, recognizance, set of interrogatories, account, or other document, allowed and signed by the Masters	0	5	0
For perusing and settling the draft of every deed (except lease for a year), where such deed shall not exceed 30 folios	1	0	0
Where such deed shall exceed 30 folios and not exceed 50 folios	1	10	
And where such deed shall exceed 50 folios and not exceed 100 folios	2	10	0
And where such deed shall exceed 100 folios	3	0	0
Fee on preparing every recognizance	1	1	0
For an examination fee on each witness, exclusive of oath	0	5	0
For examining the engrossments of deeds, each skin	0	3	4
For comparing deeds, books, and papers, with the schedule, on their being deposited or delivered out, where the schedule shall not amount to 50 folios	0	6	8

Fees and Costs in Lunacy.

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	£	s.	d.
Where the schedule shall amount to 50 folios	0	13	4
For attending any Court per day by the clerk	0	13	4
For searching for papers in a matter not in immediate progress before the Masters	0	6	8
For every oath	0	1	6
For entering accounts of receivers, consignees, and committees, per folio in each book	0	0	6
For every exhibit	0	2	6

Table of Fees taken in the Secretary of Lunatics' Office.

For every order	2	10	0
For every duplicate of an order requiring to be drawn up in Chancery	0	10	0
A petition for a <i>writ de lunatico inquirendo</i> , or for any other matter	0	15	0
For filing every petition	0	10	0
Entering a caveat	0	5	0
Withdrawing same	0	1	0
Copy of orders made in Court, or of petitions, the first side	0	1	6
Every other side	0	1	0
Setting down every petition for hearing	0	1	0
Filing a copy of every affidavit, the first side	0	2	0
Every subsequent side	0	0	8

Where the Affidavit is already filed.

For the officer's hand	0	1	0
For the copy of the first and every other side	0	0	8
For a search	0	1	0

Table of Fees of the late Clerk of the Custodies Office now taken in the Masters and Secretary Offices respectively.

Every commission to inquire of the idiocy or lunacy of any one person	2	12	0
If of two persons	5	4	0
Superseding every commission of idiocy or lunacy	1	4	0
Every bond given by committees of idiots or lunatics	0	14	0
Drawing every bill for the custody of a lunatic's or idiot's person or estate, or both	2	0	0
If containing a revocation of a former grant	3	0	0
If containing a grant of the custody of two persons	4	0	0
Attending the Attorney General upon every committee's giving security	0	10	0

	£	s.	d.
Every grant of the custody of an idiot's or lunatic's person, estate, or both	3	13	4
If of two persons	7	6	8
Inrolling every grant of the person or estate, or both	1	0	0
If the grant be of the custody of two persons, or contains a revocation of a former grant	2	0	0
Drawing every revocation of a grant of the custody of an idiot's or lunatic's person or estate, or both	1	0	0
Revocation of a grant of every idiot's or lunatic's person or estate, or both	3	13	4
Inrolling every revocation of the custody of an idiot's or lunatic's person or estate, or both	1	0	0
Every commission or <i>dedimus</i> to examine witnesses, or take examinations	0	6	10
Filing and copying all orders, reports, and affidavits, two shillings the first sheet	0	2	0
And 1s. every other sheet, of ninety words each sheet	0	1	0
Copy of depositions or examinations, one shilling the first sheet	0	1	0
And 8d. every other sheet, of ninety words each	0	0	8
Vacating or delivering up every bond or recognizance	1	6	8
Every summons to committee and sureties to account	0	6	8
Two writs of <i>scire facias</i>	1	4	8
Every writ of execution, <i>per skin</i> , containing sixteen sheets, of ninety words each	1	6	8
Half skin	0	13	4
Every attachment	0	3	10
Every writ <i>ne exeat regno</i>	0	12	4
Filing every year's account of an idiot's or lunatic's estate, affidavit of the truth thereof, and Master's report	1	0	0
Copying every year's account	0	5	0
Every certificate	0	6	8
Every caveat entered	0	5	0
Copy of commission and inquisition, one shilling the first sheet	0	1	0
And 8d. every other	0	0	8
A search	0	1	0



COSTS IN LUNACY.

IN the matter of Ann Adams, a person of unsound mind.
 Bill of costs, charges, and expenses, of Jane Adams, the only sister and committee of the person of the above lunatic, incurred in and about the suing out and prosecuting the commission of lunacy in this matter and consequent thereon, and of all proceedings had subsequently thereto, to be taxed pursuant to order, dated the — day of — 1845 (a).

£ s. d.

1845, May.—Journey to — to meet the trustees under the will of the late [<i>two testators</i>], on the subject of a commission of lunacy against the above-named Ann Adams, when instructions were given to sue out a commission	.	.	.	.	2	12	0
Instructions for petition for commission of lunacy	(b)	0	0	0			
Drawing and engrossing same	.	.	.	.	0	10	0
Attending to present same	.	.	.	.	0	6	8
Paid answering	.	.	.	.	0	15	0
Attending to file same	.	.	.	.	0	6	8
Paid filing	.	.	.	.	0	10	0
Attending Jane Adams at — reading over and attesting, and attesting her signature thereto	.	.	.	.	0	13	0
Horse-hire and expenses (six miles)	.	.	.	.	0	8	0
Writing letter to Mr. — (surgeon), requiring what day would be convenient for him to accompany me to — to examine and affirm as to Ann Adams' state of mind	.	.	.	.	0	3	6
The like to Mr. — the superintendent of the — Asylum	.	.	.	.	0	3	6
Journey to — with Mr. — and Mr. — to see Mr. — and Mr. — there, (eighty-nine miles), absent two days	.	.	.	.	6	6	0
Railway and expenses, &c.	.	.	.	.	4	9	0
Instructions for affidavits in support of commission	.	.	.	.	0	0	0
Drawing affirmation of Mr. — fo. 6	.	.	.	.	0	0	0
Engrossing same	.	.	.	.	0	0	0

(a) It is scarcely necessary to observe that the amount of bills of costs must depend upon the particular circumstances of every case, and precedents of bills of costs are for the most part useful for pointing out the course of the proceedings, and the amount allowed for particular charges which occur in almost every case. For some charges of common occurrence in a bill of this kind, see *post*, p. 976.

(b) In cases where the noughts follow, the charges were taxed off.

	£	s.	d.
Attending to read over and get affirmed	0	0	0
Affirmation	0	2	6
Instructions for affirmation of Mr. ———	0	0	0
Drawing affirmation, fo. 5	0	0	0
Engrossing same	0	0	0
Attending to read over same and get affirmed	0	0	0
Affirmation	0	2	6
Instructions for affidavit of Mr. ———	0	0	0
Drawing same, fo. 4	0	0	0
Engrossing same, fo. 5	0	0	0
Attending to read over and get sworn	0	0	0
Oath	0	2	6
Instructions for affidavit of Mr. ———	0	0	0
Drawing same	0	0	0
Engrossing same, fo. 3	0	0	0
Attending to read over and get sworn	0	0	0
Oath	0	2	6
Paid filing five affidavits in support and for office copy	1	3	4
Carriage of papers to London	0	3	10
Paid for commission	3	13	2
Solicitor's fee thereon	2	2	0
Several attendances on the Masters in Lunacy, appoint- ing time and place of executing the commission	0	13	4
Attending to file commission	0	6	8
Paid filing	0	0	0
Paid for summonses for witnesses	0	3	0
Paid for printed forms for Mr. Adams	0	8	0
Postage thereof	0	3	5
Instructions for affidavit of Mr. ——— as to the property of Ann Adams	0	6	8
Drawing same, fo. 8	0	8	0
Engrossing same	0	2	8
Attending to read over same and get sworn	0	6	8
Oath	0	2	6
Drawing and two fair copies of notice to lunatic of time of executing commission	0	5	0
Drawing and engrossing precept to sheriff to summon jury	0	10	0
Attending the Master in Lunacy with precept and summons for signature	0	0	0
Writing therewith to ——— requesting Mr. ——— to serve lunatic and explain notice to her	0	3	6
Making six copies subpœnas, and service of two thereof on two witnesses	0	10	0
Attending them, taking down particulars of their evidence	0	13	4
Clerks journey to ——— to deliver precept to Undersheriff and attending serving two witnesses with subpœnas	0	15	0
Railway and expenses	0	12	0

£ s. d.

<i>June.</i> Journey to ——— to obtain certificate of the marriage of the lunatic's father and mother, horse-hire and expenses (six miles)	1	1	0
Paid for certificate and search	0	2	6
Journey to ——— (sixteen miles) to examine Mrs. ——— and the Rev. ———, taking down their evidence and serving them with subpoenas	1	1	0
Horse-hire and expenses	0	12	6
Attending at the church in ——— obtaining certificates of the births of Ann Adams and Jane Adams, and of the burials of their father and mother	0	6	8
Paid for same	0	5	0
Instructions for brief for counsel	0	13	4
Drawing fair copy of brief of evidence and of affidavit in support of commission, one for solicitors	2	3	4
Copy affidavit for Master in Lunacy, three sheets	0	10	0
Making fair copy of Mr. ———'s will for the use of the Master in Lunacy, twenty brief sheets	2	0	0
Drawing inquisition	1	0	0
Fair copy	0	6	8
Engrossing same for jurors to sign	0	6	8
Attending them	0	6	8
Perusing wills, accounts, papers, &c., taking instructions for state of facts	0	0	0
Drawing same and two fair copies, 11 brief sheets each	5	10	0
<i>June 19th, 20th, and 21st.</i> Journey to attend the execution of commission, eighty-nine miles, absent three days when Ann Adams was declared to be a person of unsound mind; Solicitor and clerk	9	9	0
Railway, coach-hire, and expenses	5	0	0
Paid Undersheriff	11	11	0
Twenty-three jurymen, 10s. 6d. each	12	1	6
Paid summoning officer	3	9	0
Paid Mr. ——— (solicitor) for service of notice on lunatic, attending to prove same, use of office, &c.	2	2	0
Paid Mr. ——— (surgeon) for attending lunatic in May, in order to make affidavit in support of petition, and again at this time, and for giving evidence before the Master in Lunacy and jury	3	3	0
Paid Mrs. ———	3	18	0
Paid Rev. ———	6	6	0
Jane Adams's travelling expenses	3	3	0
Paid Mr. ——— (surgeon) his attending at ——— two days in May, and two days in June (<i>a</i>).			
Mr. ——— the like			

(*a*) What is allowed to the medical men will depend very much upon the particular circumstances of each case.

	£.	s.	d.
Attending to file inquisition	0	6	8
Paid	0	5	0
June 23. The Master in Lunacy having required an affidavit by Mr. — and Mr. —, trustees under Mr. —'s will, to confirm the affidavit made by Mr. — as to lunatic's property, &c. Drawing same very long with schedules of property annexed, and fair copy	1	1	0
Journey to — (fifteen miles) to get Mr. — sworn, and read over and explained affidavit to him	1	1	0
Gig-hire and expenses	0	12	0
Oath	0	2	6
Writing agents therewith, and also with the probate copy of the will, and appointment of new trustees	0	0	0
Carriage of the probate and appointment returned	0	3	0
Master's in Lunacy fee on <i>vivâ voce</i> examination of witnesses before him on the execution of the commission	0	6	6
The like for copy <i>vivâ voce</i> examination, fo. 6	0	2	0
Close copy	0	2	0
And for four oaths and five exhibits	0	18	6
Paid for copy written consent of Mr. — to act as committee, fo. 2	0	0	8
Warrant on leaving four affidavits in support of proposal, copy and service	0	5	6
Three warrants to proceed on facts and affidavits, copies and services	0	16	6
Attending thereon	1	0	0
Warrant on preparing report, copies and services	0	5	6
Paid for copy draft report, fo. 85	1	8	4
Close copy	1	8	4
Four warrants to settle same, copies and services	1	2	0
Attending thereon	1	6	8
Paid carriage of probate of [<i>testator's</i>] will to produce before the Master in Lunacy	0	2	8
Another warrant to settle draft report, copy and services	0	0	0
Attending thereon	0	0	0
Paid Master's fees on drawing report, fo. 60	3	0	0
Schedules, fo. 25	0	12	6
Paid transcribing report	1	8	4
Warrant to sign copy and service	0	5	6
Attending examining transcript	0	6	8
Paid signing report	1	0	0
Attending to file same	0	6	8
Paid filing and for office copy	3	14	6
Carriage of probate of testator's will and appointment of trustees returned	0	3	10

	£	s.	d.
Instructions	0	6	8
Drawing petition to confirm report, fo. 90	3	5	0
Engrossing same to present	1	1	8
Copy for the Court	1	1	8
Attending to present petition	0	6	8
Paid answering	0	16	0
Brief petition for counsel, nine sheets	1	3	4
To Mr. — with brief and clerk	3	5	6
Attending him	0	6	8
July 22. Attending Court, petition in paper but not called on	0	10	0
“ 24. The like	0	10	0
“ 25. The like	0	10	0
“ 26. The like and order made	0	13	4
Paid Court fees	0	13	0
Paid for copy minutes	0	14	6
Close copy	0	7	6
Attending settling same	0	6	8
Paid for order	2	10	6
Ditto for duplicate	0	10	6
Attending passing order	0	6	8
Paid filing petition	0	10	0
Attending filing	0	6	8
Paid for office copy order	2	0	6
Attending to file same	0	6	8
It being necessary to prove at the Bank the death of Mr. — in whose name in a joint account with — other part of the stock stood, attending at the Bank with affidavit to prove same accordingly	0	6	8
August. Attending and procuring certificate of burial of the late Mr. —	0	6	8
Paid	0	2	6
Instructions for declaration to verify same, and identify Mr. — to prove him dead at the Bank	0	6	8
Drawing same and fair copy	0	6	8
October 25. The order 20th July directing the trustees to transfer into Court £3 5s. <i>per cent.</i> standing in their names attending at the Bank, bespeaking power of attorney for that purpose	0	6	8
The description in the bequest differing from that in the Bank books writing to Mr. — at — for a correct description of the trustees	0	3	6
October 30. Attending at the Bank with corrected description of the trustees	0	6	8
Nov. 3. Paid carriage of briefs, draft, costs, &c.	0	4	1
Paid for power to transfer stock	1	1	6
Writing to Mr. — therewith	0	3	6

	£	s.	d.
He having returned same duly executed attending to leave same at the Bank for inspection	0	6	8
Attending to draw up order for the Accountant General	0	6	8
Paid for same	0	10	0
Attending to pass and enter same	0	6	8
Paid entering	0	5	6
Attending Accountant General, bespeaking direction to transfer stock	0	6	8
Paid	0	4	0
Attending broker, instructing him to attend to make the transfer	0	6	8
Nov. 18. Attending with broker, and transferring the stock into Court	0	13	4
Paid broker's commission	3	3	0
Warrant to enlarge time for the Master to perfect the security, copy and service	0	5	6
Attending thereon when time was granted	0	6	8
Paid for certificate enlarging time to perfect security	1	0	8
Attending to file same	0	6	8
Paid filing and for office copy	0	6	10
Attending to bespeak bond for committee and his sureties to enter into	0	0	0
Paid preparing same and duty	2	11	0
Writing to the committee therewith	0	3	6
The bond being returned attending to lodge same, and to bespeak bill of custody	0	0	0
Paid preparing bill of custody and parchment	2	2	0
Attending the Attorney General therewith	0	10	0
Paid his fees	5	13	6
Attending to bespeak grant of custody and afterwards for same	0	0	0
Paid for same	8	4	10
Solicitor's fee thereon	3	3	0
Dec. 15. Writing to Mr. — at — with grant	0	3	6
Carriage of same	0	3	10
The order directing the trustees — and — to pay in the sum of £ — attending to bespeak duplicate report of property to file at the Report Office, the Accountant General declining to act on the other copy	0	0	0
Paid for same	3	14	6
Attending to file same	0	6	8
Paid filing and for office copy at the Report Office ; paid expedition	3	15	7
Attending to bespeak direction from the Accountant General to pay in the sum of £ — and afterwards for same	0	6	8

	£	s.	d.
Attending Bank to procure money, and afterwards attending at the Bank of England to pay the same in Coach-hire	0	13	4
Attending to file cashier's receipt with the Accountant General, and afterwards for office copy	0	0	0
Paid	0	4	0
A sum of £ — part of the lunatic's estate being charged on an estate at — and the order empowering the trustees to apply for and receive the same and to give a release for the same on obtaining the grant paid carriage of papers	0	3	10
Instructions for and drawing release	1	11	8
To Mr. — to settle	2	4	6
Making fair copy, fo. 25	0	8	4
Attending him	0	6	8
Postage of same into country	0	3	0
Attending Mr. — the committee of the estate, advising as to the obtaining payment of the £ — charged on — and the release to be given to such committee	0	6	8
Engrossing release	0	16	8
Memorial for Register Office	0	10	0
Paid for stamps and parchment	2	8	6
Journey to — to meet Jane Adams and complete the business	1	1	0
Gig-hire and expenses	0	12	0
Attending the execution of the release by the committees	0	6	8
Journey to — to register the deed, horse-hire, &c.	1	1	0
Paid registering and expedition	0	6	0
Attending the Accountant General, bespeaking direction to pay in the £ —	0	6	8
Attending at the Bank to receive the money and afterwards at the Bank paying same, and afterwards to file the cashier's receipt	0	13	4
Paid filing	0	4	0
Drawing request to the Accountant General to invest the money paid in	0	2	6
Attending to invest same	0	6	8
Paid	0	7	0
Attending to bespeak reference to the Lunacy Master	0	6	8
Making copy of the order for him (<i>long</i>)	0	6	0
Drawing costs and copy, fo. 44	1	9	4
Warrant on leaving same and attending thereon	0	5	6
Warrant to tax	0	5	6
Warrants to tax	0	5	6
Attending same	0	13	4
Paid for certificate of costs	1	2	0
Paid for filing same	0	5	4

	£	s.	d.
Attending to file same	0	6	8
Term fee, letters, messengers, carriages and portrages	2	2	0
Drawing and engrossing affidavit in support of amount of property	0	16	0
Attending to swear same	0	6	8
Oath	0	1	6
Warrant on leaving order copy and service	0	5	6
<hr/>			
<i>The amount of the bill, exclusive of what was paid to the medical men, was</i>	237	19	9
Taxed off	20	17	0
<hr/>			
	£237	19	9
<hr/>			

Under the general orders in Chancery, 26th October, 1842, third schedule, a per centage of £4 is added on the amount of every bill of costs as taxed.

Some items in a Bill of Costs where the Commission was executed near London—the preceding Bill relates to a Country Commission.

Instructions for affidavit in support of application for commission	0	6	8
Drawing same, fol. 14	0	15	0
Attending to read over affidavit, and altering same in accordance with additional circumstances discovered as to lunatic's state of mind	0	6	8
Attending to read over to witnesses, and to public office to be sworn	0	6	8
Paid two oaths	0	3	0
Paid filing and for office copy	0	9	10
Instructions for affidavit of Dr. — in support of petition	0	6	8
Drawing same, fol. 4	0	4	0
Making copy thereof for Dr. T. at his request	0	1	4
Writing to Dr. — making appointment to attend	0	3	6
Attending Dr. — pursuant to appointment—reading over ingrossment, and to public office to be sworn thereto	0	6	8
Paid oath	0	1	6
Paid filing and for office copy	0	4	2

Similar charges for Affidavit, &c., of another Physician.

Instructions for Petition for commission of lunacy	0	6	8
Drawing same, fol. 10	0	10	0
Ingrossing same	0	3	4

Writing letter to petitioner for an appointment to attend and sign petition	£	s.	d.
	0	3	6
Having received an answer from the petitioner, wishing us to wait on him and — at — with the petition for signature, attending on them there and attesting their execution thereto, engaged three hours	1	0	0
Attending the Master as to engaging room at some respectable inn at — for execution of commission, and informing him thereof	0	6	8
Attending at —, visiting several inns there, and at last engaging the large room at the — inn there, for executing the commission, the same appearing to be large enough to accommodate the jury and witnesses, three hours	1	0	0
Drawing precept to sheriff to summon a jury, fol. 10	0	10	0
Fair copy for Master in Lunacy	0	3	4
Attending on him and obtaining his signature thereto	0	6	8
Drawing summons for three witnesses	0	15	0
Attending Master and obtaining his signature thereto	0	6	8
Attending on undersheriff with precept, and instructing him to summon the jury	0	6	8
Copy and service of summons on Dr. — in —	0	10	0
Writing long letter to petitioner explaining to him the evidence which would be necessary to support the commission	0	5	0
Copy and service of summons on witnesses, for each witness	0	10	0
Drawing notice to lunatic of execution of commission, and fair copy	0	5	0
Attending twice at — to serve her therewith, and reading over and explaining same to her, and serving her therewith, three hours	1	0	0
Drawing pedigree of the lunatic's family, and fair copy for Master	0	10	0
Attending the witnesses severally previous to their attendance at the execution of the commission, and examining them, and taking notes of their testimony	1	6	8
Brief, petition, and affidavits in support for use on execu- tion of commission, three sheets	0	10	0
Attending execution of commission at — when — was found to be a lunatic	2	2	0
Drawing and engrossing inquisition on paper for the Master and jury to sign	1	1	0
Engrossing inquisition on parchment	0	10	0
Paid for parchment	0	5	0
Solicitor's fee on Master signing inquisition	0	6	8
Paid coach-hire, self, and clerk, and witnesses to and from — on execution of commission, and on pre- vious occasions	0	15	0

	£	s.	d.
Attending filing commission and inquisition at Petty Bag Office	0	6	8
Paid filing	0	5	0
Paid sheriff's charges as follows for striking jury	2	2	0
Ditto to summon jury	1	4	0
Panel	0	14	0
Attendance in Court	1	1	0
Paid ——— for summoning jury	3	3	0
Paid seventeen jurors, each 10s. 6d.	8	18	6
Paid for room at Crown Inn	1	1	0
Writing letter to Dr. ——— for an account of his fees on attending lunatic, and making affidavit	0	3	6
Paid his fees for twice visiting the lunatic	2	2	0
Ditto for attendances on previous settling and swearing affidavit in support of petition for commission	1	1	0
Writing a letter to him inclosing a cheque for the amount of his fees	0	3	6
<i>Similar charges as to another physician.</i>			
Paid physician for attending at the opening of the commission	5	5	0
Writing letter to him inclosing a cheque for the amount of his fees	0	3	6
Drawing state of facts as to heir-at-law, next of kin to lunatic, fortune of lunatic, and as to maintenance, &c., fol. 25, and fair copy for petitioner at his request	0	16	8
Attending ——— as to the necessary evidence in support of the state of facts, making inquiries as to the past and present maintenance of the lunatic, her fortune and relations, and obtaining from them the necessary information and evidence to complete the state of facts	0	13	4
Fair copy state of facts for Master in Lunacy	0	8	4
Warrant on leaving same, copy and service	0	5	6
Warrant to proceed	0	5	6
Two summonses to take examination of witnesses in support of facts <i>vivâ voce</i> before the Master	0	11	0
Attending same when examination taken	0	13	4
Attending warrant on state of facts as to heir-at-law, next of kin, maintenance, &c. of lunatic, when same was allowed	0	6	8
Paid for copy <i>vivâ voce</i> examination of ——— the petitioner in support of state of facts, fo. 4	0	1	4
Close copy, fol. 4	0	1	4
<i>Similar charges for another examination</i>			
Paid Master for taking three <i>vivâ voce</i> examinations and oaths	0	19	6
Warrant to shew cause why report should not issue	0	5	6
Attending same no cause shewn	0	6	8
Warrant on preparing report, copy and service	0	5	6
Paid Master drawing report, fol. 23	1	3	0

Costs in Lunacy.

979

	£	s.	d.
Paid for copy draft report, fol. 23	0	7	8
Close copy	0	7	8
Warrant to settle same, copy and service	0	5	6
Attending same	0	6	8
Attending the petitioner, going over draft report with him when he made several alterations therein, and supplied some further evidence necessary to complete same	0	6	8
Paid signing and transcribing report	1	7	8
Warrant to sign copy and service	0	5	6
Attending same, examining transcript	0	6	8
Attending to file same and for office copy	0	6	8
Paid filing and for office copy	1	4	2
Instructions for petition to confirm report, and for consequential directions (a)	0	6	8
Drawing same, fol. 32	1	12	0

Costs on passing accounts as taxed by Master in Lunacy, under 14 Order, 27th October, 1842.

In the matter, &c.

The bill of costs of E. W. the committee of the estate, on passing his ——— account of receipts and payments, from the 9th day of Nov. 1845, to the 29th day of Sept. 1846.			
Drawing ——— account of receipts and payments, and fair copy for Master, fol. 20 at 8 <i>d.</i> per fol.	0	13	4
Warrant on leaving copy and service	0	5	6
Paid for two warrants to proceed on ——— account, copy and service	0	11	0
Attending same	0	13	4
Warrant on casting account, copy, and service	0	5	6
Attending same (b)	0	6	4
Warrant on preparing report, copy and service	0	5	6
Warrant to settle copy and service	0	5	6
Attending same	0	6	8
Warrant to sign	0	5	6
Attending taxation	0	6	8
Paid fees on entering account, fo. 20 at 6 <i>d.</i> per fol.	0	10	0
Paid drawing affidavit, verifying account, and engrossing same	0	1	4
Paid oath before Master, extra	0	2	6
Paid for Master's allowance of account	0	5	0
Attending committee, reading over account and affidavit, verifying account	0	6	8
Parcel up with account	0	4	0
Parcel down with account	0	4	0

(a) See *ante*, pp. 973—975.

(b) These two items referred to a very long account.

	£	s.	d.
Drawing this bill of costs, and fair copy for the Master	0	4	0
Warrant on leaving copy, and service	0	5	6
Warrant to tax copy, and service	0	5	6
Attending	0	6	8
Paid for copy report on passing ——— account	0	2	0
Close copy	0	2	0
Paid drawing report, fo. 6	0	6	0
Paid signing	1	0	0
Paid transcribing	0	2	0
Paid filing, and for office copy, account	2	14	6
Attending	0	6	8
Paid copy, costs of M. W.	0	0	0
Attending taxing	0	6	8
Letters and messengers	0	10	0

Costs of Next of Kin on passing Committees ——— Accounts.

In the matter, &c.

Costs of S. W. one of the next of kin, on passing the ——— account of T. W. the committee.

1845.—Paid for copy account, fo. 40, at 4d. per fo.	0	13	4
Attending two summonses to proceed	0	13	4
Attending summons to settle balance	0	6	8
Paid for copy draft report, fo. 10	0	3	4
Attending summons on settling report	0	6	8
Close copy	0	3	4
Paid for copy committees costs, fo. 8	0	2	8
Attending taxing same	0	6	8
Drawing this bill of costs, fo. 4, and copy	0	2	8
Summons on leaving copy and service	0	5	6
Summons to tax copy and service	0	5	6
Attending thereon	0	6	8
Letters, &c.	0	10	0

In the matter of A. B. late of — a lunatic (a).

The bill of costs, charges, and expenses of Mr. B. B. incurred in and about the suing out and prosecuting the commission of lunacy in this matter and consequent thereon, and of all proceedings had subsequently thereto, to be taxed pursuant to an order dated the —, 1843, and of and consequent upon the application for the said order.

1842, December, 1843, January and February. — Attend- £ s. d.

ing Mr. B. the petitioner, on the subject of A. B.'s conduct, and the refusal of the Bank in consequence to continue payment of her dividends, without which she could not be supported, also conferring and advising as to an application to the parish; conferring also with Mr. — the solicitor for (*certain charitable institutions therein named*), which are the residuary legatees named in a will the lunatic had made in 1835, perusing the will, and there appearing no doubt of her insanity, and no other means of making her property available for her support, it was determined to apply for a commission of lunacy, these attendances very numerous . . .

1 0 0

Mr. B. having referred us to Mr. — the medical attendant on A. B., also to Mr. — and his daughter Miss B. as persons who could establish the lunacy by their evidence. Attending those parties severally to learn their opinions, and take particulars of their knowledge of A. B. and their means of knowledge .

0 13 4

Instructions for petition .

0 6 8

Drawing and engrossing same .

0 6 8

Instructions for affidavit of Mr. B. in support .

0 6 8

Drawing same, fo. 17, and fair copy .

0 17 0

Engrossing same .

0 5 8

Attending deponent, reading over same, and with him

to be sworn 0 6 8

Paid oath

0 1 6

(a) This and the next bill of costs relates to a lunatic, who, according to the Master's report, had no relations living, and who had resided as a lodger with the petitioner for the commission for nine years, no persons calling on her and representing themselves as her relations. The lunatic had certain Long Annuities for 80 years, from 5th January, 1700, and, according to the evidence, the lunatic had no other property except a few articles of furniture, and one half-year's dividend on such Long Annuities then due, and the income of the lunatic was 60*l.* Long Annuities. The Master certified that it was desirable that a committee *ad interim* of the person and estate of the lunatic should be appointed, and that the petitioner was the proper person to be appointed such committee *ad interim*, and that a certain sum should be paid to the petitioner for past maintenance out of the half-year's dividend then due. The Master certified that as the lunatic was to be placed in an asylum at the annual expense of 50*l.* payable half-yearly, that the whole of her annual income should be allowed for her future maintenance (see *ante*, pp. 175, 893, and the petition and order, *ante* pp. 913—915).

	£.	s.	d.
Instructions for affidavit of medical attendant .	0	6	8
Drawing same, fo. 7, and fair copy .	0	7	0
Attending deponent, reading over same, and with him to be sworn .	0	6	8
Engrossing same .	0	2	4
Paid oath .	0	1	6
Instructions for affidavit of Mr. — .	0	6	8
Drawing same, fo. 12, and fair copy .	0	12	0
Engrossing same .	0	4	0
Attending deponent, reading over same, and with him to be sworn .	0	6	8
Paid oath .	0	1	6
Instructions for affidavit of Miss B. .	0	6	8
Drawing same, fo. 12, and fair copy .	0	12	0
Engrossing same .	0	4	0
Attending deponent, reading over same, and with her to be sworn .	0	6	8
Paid oath .	0	1	6
Attending to present petition for commission, and several times on the Secretary of Lunatics thereon when the evidence of a second medical gentleman was required .	0	6	8
Attending the medical attendant and conferring thereon, when he suggested that Mr. — (another medical attendant) should visit A. B. for the purpose .	0	6	8
<i>March 1.</i> —Attending Mr. — in the — and instructing him to visit A. B. for the purpose of ascertaining the state of her mind .	0	6	8
<i>March 31.</i> —Attending Mr. — to ascertain the result of his visits on A. B. and taking instructions for his affidavit .	0	6	8
Drawing same, fo. 8 .	0	8	0
Engrossing same .	0	2	8
Attending deponent, reading over same, and with him to be sworn .	0	6	8
Paid oath .	0	1	6
Paid Mr. — (medical attendant) for his attendances .	1	1	0
Instructions for a further affidavit of Mr. — as to the property of A. B. .	0	6	8
Drawing same, fo. 3 .	0	3	0
Engrossing same .	0	1	0
Attending deponent reading over same, and with him to be sworn .	0	6	8
Paid oath .	0	1	6
Paid answering petition .	0	15	0
Paid filing same .	0	10	0
Attending to file same .	0	6	8
Paid for office copies of affidavits .	2	5	0
Paid for commission .	3	13	2

	£	s.	d.
Solicitor's fee thereon	2	2	0
Copy of the commission to keep	0	0	0
Attending the Masters in Lunacy to lodge commission and to get a time appointed for taking inquisition	0	6	8
Drawing and engrossing precept to summon jury, and fair copy for Master's signature	0	10	0
Drawing summonses for witnesses to attend and give evidence, and five fair copies for signature	0	17	6
Attending Masters with the precept and summons for signature	0	6	8
Attending the undersheriff with precept	0	6	8
Service of summons on five witnesses	1	5	0
Attending witnesses taking particulars of their evidence	0	0	0
Attendance at the ——— hotel to bespeak room for taking the inquisition and for witnesses	0	6	8
Drawing notice to A. B. to attend the inquisition and fair copy	0	5	0
Attending A. B. the supposed lunatic with the notice and explaining same to her	0	6	8
Instructions for brief for counsel	0	13	4
Drawing same, six sheets	2	0	0
Fair copy for counsel	1	0	0
Paid Mr. ——— of counsel therewith	5	15	0
Attending him	0	6	8
Drawing and engrossing inquisition on paper for Master in Lunacy and jurors to sign	1	1	0
Solicitor's fee on inquisition taken <i>when A. B.</i> was found a lunatic	2	2	0
Clerk's attendance as a witness	1	1	0
Paid Mr. ——— surgeon, a witness	1	1	0
Paid Mr. ——— ditto	1	1	0
Paid the jury	8	8	0
Paid the undersheriff	3	3	0
Paid the summoning officer	2	2	0
Paid for the room	2	2	0
Engrossing inquisition on parchment	0	10	6
Attending the Master in Lunacy, with same for his signature	0	6	8
Paid filing same	0	5	0
Attending to file same	0	6	8
Drawing, and fair copy, state of facts, and proposal of Mr. B., as committee <i>ad interim</i> , and as to income, fo. 8	0	5	4
Paid for warrant on leaving copy and service	0	5	6
The like to proceed	0	5	6
<i>May 2nd.</i> —Attending warrant, evidence taken <i>vivâ voce</i> in support	0	6	8
Paid four oaths	0	6	0

	£	s.	d.
Paid for four examinations of witnesses .	1	0	0
Paid for another warrant on state of facts, copy, &c. .	0	5	6
<i>May 6th.</i> —Attending same, and two witnesses examined <i>vivâ voce</i> .	0	6	8
Paid oaths .	0	3	0
Paid examiners of witnesses .	0	10	0
Paid for copy draft report, fo. 16 .	0	5	4
Fair copy .	0	5	4
Paid for warrant on preparing draft report .	0	5	6
Paid for warrant to settle .	0	5	6
Attending settling .	0	6	8
Paid for warrant to sign .	0	5	6
Attending examining transcript .	0	6	8
Paid drawing report .	0	16	0
Paid transcribing .	0	5	4
Paid fee on report .	1	0	0
Paid filing and for office copy .	0	19	4
Attending to file same .	0	6	8
Drawing petition to confirm report, and for consequen- tial directions, fo. 20 .	1	0	0
Engrossing same .	0	6	8
Fair copy for the Lord Chancellor .	0	6	8
Attending to present petition, and for same when answered .	0	6	8
Paid answering same .	0	16	0
Brief copy petition for counsel and observations .	0	10	0
Paid Mr. ——— therewith .	2	4	6
Attending him .	0	6	8
<i>21st.</i> —Attending Court petition in the paper, but not heard .	0	10	0
<i>28th.</i> —Attending Court petition heard and order made .	0	13	4
Paid Court fees .	0	13	0
Paid for office copy minutes .	0	10	6
Attending secretary of lunatics and settling same .	0	6	8
Fair copy minutes as settled .	0	5	6
Paid for order .	2	10	4
Attending to pass same .	0	6	8
Paid filing petition .	0	10	0
Attending to file same .	0	6	8
Paid for office copy order .	1	9	4
Attending to file same .	0	6	8
Paid for duplicate order .	0	10	4
Attending registrar of the Court of Chancery with du- plicate order, and to draw up order of Court .	0	6	8
Paid for the Chancery order .	0	10	0
Paid entering same .	0	3	6
There not being time to complete the transfer of the Long Annuities into the name of the Accountant			

	£	s.	d.
General of the Court of Chancery, by reason of the closing of the office, so as to perfect the security by the time limited by the order. Drawing state of facts to enlarge time for that purpose . . .	0	2	0
Paid for warrant on leaving same . . .	0	5	6
Paid for warrant to proceed . . .	0	5	6
Attending same time enlarged to a day named . . .	0	6	8
Attending to bespeak certificate . . .	0	6	8
Paid for same . . .	1	1	0
Attending to file same . . .	0	0	0
Paid filing and for office copy . . .	0	6	10
<i>November.</i> —Attending the Accountant General with the Chancery order, to bespeak direction to transfer the Long Annuities, when it appeared that there was already an account which occasioned some variance in the account necessary, and attending secretary of lunatics, who consented to vary the title, by adding “late of, &c.” . . .	0	6	8
Paid altering the original order and office copy . . .	0	2	0
Attending to get duplicate order from the registrar to be corrected, and with same on secretary of lunatics, afterwards with registrar, who allowed the Chancery order, and to get the same entered . . .	0	6	8
Attending the Accountant General to bespeak direction to transfer the stock . . .	0	6	8
Paid for the direction . . .	0	4	0
Attending to bespeak direction to pay in the dividends . . .	0	6	8
Attending the Accountant General of the Bank of England to obtain the transfer of payment into Court, when an office copy of the Chancery order was required to be deposited at the Bank, and attending to bespeak office copy accordingly . . .	0	6	8
Paid for office copy, Chancery order . . .	0	11	0
<i>November 8th.</i> —Attending the secretary of the Bank with same to the chief Accountant, and thence to the registrars’ office at the Bank, leaving office copy order for examination with their account . . .	0	6	8
<i>November 9th.</i> —Attending at the Bank this day when account was declared correct, and attending the chief Accountant to appoint time afterwards on Accountant General, and the Bank solicitor to appoint time to attend and make the transfer . . .	0	6	8
<i>November 10th.</i> —Attending at the Bank this day with the Accountant General of the Bank and the Bank solicitor, when the stock was transferred; and also, when the Accountant General received the dividends, and paid same over to the Accountant General of the Court of Chancery . . .	0	6	8

	£	s.	d
Paid Bank solicitors their charges	0	6	8
Attending the Accountant General of the Court of Chancery, with receipt for the dividends, and after- wards to file same	0	0	0
Paid filing and for office copy	0	4	0
Drawing state of facts, and proposal of committee's sureties, fo. 6	0	4	0
Paid for warrant on leaving copy and service	0	5	6
The like to proceed	0	5	6
Attending same, proposal approved	0	6	8
Paid for warrant on passing report	0	5	6
Paid for warrant to settle	0	5	6
Paid for copy report, fo. 5	0	1	8
Fair copy	0	1	8
Attending settling	0	6	8
Paid for warrant	0	5	6
Attending examining transcript	0	6	8
Paid drawing report	0	5	0
Paid fee on report	1	0	0
Paid transcribing	0	1	8
Attending to bespeak, and afterwards for bond of com- mittee and sureties	0	6	8
Paid preparing bond and duty	2	11	0
Writing to Mr. B. to appoint his sureties, and to attend to execute bond	0	3	6
Attending Mr. B. and his sureties, reading over bond to the Crown, and witnessing and attesting execution	0	6	8
Drawing and engrossing affidavits of sureties	0	0	0
Attending them to be sworn	0	6	8
Paid oaths	0	3	0
Drawing and engrossing affidavits of execution of bond	0	0	0
Attending to be sworn	0	6	8
Paid oath and exhibit	0	4	0
Attending to deposit bond and affidavits of justifica- tions	0	6	8
Paid filing report, and for office copy	0	6	10
The Accountant General of the Court of Chancery requiring office copy of the commissioners' (<i>Master</i>) report from the Report Office in Chancery attending to bespeak, and afterwards for duplicate report	0	6	8
Paid for same	1	1	8
Paid filing same and for office copy	0	5	4
Attending to file same	0	0	0
Attending the Accountant General to bespeak, and afterwards for cheque for payment to the committee, and with the committee to receive same, and to iden- tify him—on two occasions	0	13	4
Copy order for the Taxing Master, &c.	0	2	6

	£	s.	d.
Drawing this bill and copy, fo. 38	1	5	4
Paid for the warrant on leaving	0	5	6
Two warrants to tax	0	11	0
Attending taxing	0	13	4
Paid for certificate of costs	1	2	0
Paid filing and for office	0	6	10
Attending to file same	0	6	8
Numerous attendances, much trouble, frequent inquiries, letters, &c., during these proceedings	1	0	0
Amount of bill	112	17	0
Per centage	4	7	0
	117	4	0
Taxed off	3	17	4
	£113	6	8

In the matter of A. B. late of —— a lunatic.
The bill of costs of the petitioners of and incident to and consequent upon the application for an order dated —— 1844 (a)

	£	s.	d.
Instructions for petition	0	6	8
Drawing same, fo. 35	1	15	0
Engrossing same	0	11	8
Copy for the Lord Chancellor	0	11	8
Attending to present petition	0	6	8
Paid answering same	0	16	0
Attending at [name] church searching for and taking extract of burial of the lunatic	0	6	8
Paid for same	0	2	6
Instructions for affidavit of Mr. —— and Mr. —— in support of petition	0	6	8
Drawing and engrossing same	0	6	8
Attending Mr. —— reading over affidavit, and with him to be sworn	0	6	8
Paid two oaths	0	3	0
Paid filing and for office copy	0	4	2
Brief petition and affidavit for counsel, 4 sheets	0	13	4
Paid Mr. (counsel) with brief	2	4	6
Attending him	0	6	8

(a) This bill of costs relates to the same matter as the preceding one, *ante*, pp. 981—987, was taxed in pursuance of the order stated, *ante*, p. 915.

	£	s.	d.
<i>Dec. 6.</i> —Attending Court, petition heard, and order made subject to the approbation of the Solicitor to the Treasury, whom the Lord Chancellor directed to be served	0	13	4
Making copy petition for Solicitor of the Treasury	0	11	8
The like of the lunatic's will	0	6	8
Attending Solicitor for Treasury who referred the matter to Mr. — the agent for the Treasury, attending him three times thereon, when he had no objection and communicated the consent of the Crown to the Secretary of Lunatics	0	13	4
Paid Court fees	0	13	0
Paid copy minutes	0	7	6
Attending settling	0	6	8
Fair copy minutes as settled	0	4	0
Paid for the order	2	10	4
Attending to pass same	0	6	8
Paid for office copy order	0	15	4
Paid filing petition	0	10	0
Attending filing	0	6	8
Paid for duplicate order	0	10	4
Attending to bespeak, and afterwards for duplicate order and to file office copy order	0	6	8
Attending Registrar of the Court of Chancery with duplicate order to draw order of Court, and afterwards to pass and get same entered	0	6	8
Paid for Chancery order	0	10	0
Paid entering same	0	3	6
Attending to get recognizances delivered up to be cancelled	0	6	8
Paid for same	1	6	8
Making copy order for Taxing Master	0	2	6
Drawing this bill and copy	0	7	4
Paid for warrant on leaving	0	5	6
The like to tax	0	5	6
Attending taxing	0	6	8
Paid for certificate of costs	1	2	0
Paid filing and for office copy	0	6	10
Attending to file same	0	6	8
Paid for duplicate certificate	1	2	0
Paid filing and for office copy	0	5	4
Attending to file same	0	6	8
Drawing and engrossing affidavit of the total amount of costs under this and previous certificate of costs	0	6	8
Attending to be sworn	0	6	8
Paid oath	0	1	6
Paid filing same and for office copy	0	4	8

Costs in Lunacy.

989

£ s. d.

Attending the Registrar with the order, and affidavit to bespeak, and afterwards for certificate to the Accountant General for sale of stock	0	6	8
Paid for certificate	0	2	6
Attending Accountant General to bespeak the sale	0	6	8
Paid for sale	0	5	0
Paid entering cheque for costs	0	2	4
Drawing and engrossing affidavit of the residue of the stock after the sale	0	6	8
Attending to be sworn	0	6	8
Paid oath	0	1	6
Paid filing same and for office copy	0	4	8
Attending the Registrar to bespeak certificate to the Accountant General to transfer, and afterwards for same	0	6	8
Paid for the certificate	0	2	6
Attending Accountant General to bespeak the transfer	0	6	8
Paid for same	0	3	0
Writing to the petitioners to inform them of the transfer having been made, and of the amount	0	3	6
Letters, &c.	0	10	0
<hr/>			
Amount of bill	30	15	8
Paid taxing	1	4	7
<hr/>			
Amount of certificate	£32	0	3
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Bill of Costs for obtaining Lease of Lunatic's Estate.

IN the matter of A. B., a person of unsound mind.
The bill of costs, charges and expenses of the committees of the estate of the said A. B., to be taxed pursuant to an order, &c.

Trinity Term, 1844.

Attending committee on his leaving agreement of lease he had entered into with [<i>lessee</i>] for granting him a lease of Hall Farm, and taking his instructions to prepare lease accordingly	0	6	8
Drawing proposal for granting lease of Hall Farm to [<i>lessee</i>], fo. 4, and fair copy thereof	0	2	8
Instructions for affidavit in support thereof	0	6	8
Drawing same, fo. 5, and fair copy for Mr. — (Surveyor) and Mr. — (Steward)	0	5	0
Drawing lease, fo. 36	1	16	0
Attending counsel therewith	0	6	8

	£	s.	d.
Paid his fee and clerk	1	3	6
Writing Mr. — (Surveyor), with affidavit for him and Mr. — (Steward), to peruse; and for an appoint- ment to attend and swear same	0	3	6
Fair copy draft lease as settled for Mr. — (Solicitor) for lessee, for perusal on behalf of lessee	0	12	0
Perusing alterations made by Mr. — (Solicitor) in draft lease, and introducing same in our draft	0	6	8
The committee having determined to join in the affidavit instead of Mr. — (Steward), engrossing affidavit to support proposal for committee and Mr. — fo. 5	0	1	8
Attending reading over affidavit, and to get parties sworn	0	6	8
Paid oaths	0	3	0
Summons on leaving proposal copy and service	0	5	6
Summons to proceed thereon copy and service	0	5	6
Attending thereon proposal allowed	0	6	8
Summons on leaving draft lease copy and service	0	5	6
Two summonses to settle same copy and service	0	11	0
Summons on leaving affidavit copy and service	0	5	6
Attending two summonses to settle draft lease when the Master in Lunacy approved thereof, and re- quested to be furnished with copy agreement	0	13	4
Copy agreement between committee and Mr. — [lessee], for the Master	0	2	0
Summons on preparing report copy and service	0	5	6
Master's fee on drawing report, fo. 14	0	14	0
Paid for copy report, fo. 14	0	4	8
Close copy	0	4	8
Summons to settle report copy and service	0	5	6
Attending thereon	0	6	8
Summons to sign report, copy and service	0	5	6
Attending thereon	0	6	8
Paid Master's fee on transcribing	0	4	8
Ditto on signing	1	0	0
Attending filing report	0	6	8
Paid for office copy report	0	16	4
Instructions for petition to confirm report	0	6	8
Drawing same, fo. 22	1	2	0
Engrossing petition	0	7	4
Copy for the Lord Chancellor	0	7	4
Attending presenting petition	0	6	8
Paid answering	0	16	0
Copy petition, with Lord Chancellor's order for service	0	7	4
Service thereof	0	2	6
Making brief of petition for counsel, three sheets	0	10	0
Attending counsel with brief	0	6	8
Paid his fee and clerk	2	4	6

Costs in Lunacy.

991

	£	s.	d.
Attending at the Lord Chancellor's house, and several times on Secretary to ascertain if order made .	0	13	4
Paid Court fees	0	13	0
Paid for copy minutes of order	0	5	6
Close copy	0	3	0
Attending settling	0	6	8
Attending passing order	0	6	8
Paid for order	2	10	2
Paid for office copy order	0	12	2
Attending, examining, and passing the same	0	6	8
Paid filing petition	0	10	0
Summons to examine lease and counterpart copy, and service	0	5	6
Attending thereon	0	6	8
Attending the Master when he signed his approval of lease and counterpart	0	6	8
Paid the following to Master:—			
Settling draft lease, fo. 36	1	10	0
Allowing same	0	10	0
Examining engrossments, two skins each	0	13	4
Certificate of allowance	1	2	0
Paid stationer's charges for engrossing lease and counterpart	6	6	0
Attending to file certificate and for office copy	0	6	8
Paid for same	0	6	10
Attending at — by appointment and attesting execution of lease by committees	0	13	4
Writing to solicitor for (<i>lessee</i>) that lease had been executed, and requesting an appointment to exchange same for counterpart	0	3	6

Hilary Term, 1845.

Attending (solicitor) exchanging lease for counterpart .	0	6	8
Copy order for the Taxing Master	0	5	0
Drawing this bill of costs, fo. 22, and copy	0	14	8
Warrant on leaving copy and service	0	5	6
One warrant to tax copies and services	0	5	6
Attending same	0	6	8
Paid for copy costs of next of kin, fo. 8	0	2	8
Attending warrant to tax	0	6	8
Paid for certificate of costs	1	2	0
Attending to file, and for office copy	0	6	8
Paid filing and for office copy	0	7	4
Letters, messengers, postages, &c. throughout this business			

In the matter of A. B. a person of unsound mind.
The bill of costs, charges, and expenses of the heir-at-law and next
of kin of the said A. B. — to be taxed pursuant to an order
of, &c.

Trinity Term, 1844.

	£	s.	d.
Paid for copy proposal for granting lease to Mr. — [lessee], fo. 4	0	1	4
Paid for copy affidavit in support thereof, fo. 5	0	1	8
Attending two summonses to settle draft lease	0	13	4
Attending summons to settle report	0	6	8
Making brief, copy petition to confirm report for counsel, three sheets	0	10	0
Attending counsel with same	0	6	8
Paid his fee and clerk	1	3	6
Attending Court, petition heard, and order made as prayed	0	13	4
Paid for copy minutes of order	0	5	5
Close copy	0	3	0
Attending settling	0	6	8
Attending passing order	0	6	8
Attending summons to examine lease and counterpart	0	6	8

Hilary Term, 1845.

Drawing this bill of costs, fo. and copy	0	0	0
Warrant on leaving copy, and service	0	5	6
Warrant to tax copy and service	0	5	6
Attending taxation	0	6	8
Paid for copy costs of petitioners, fo. 22	0	7	4
Attending one warrant, taxing same	0	6	8
Letters and messengers	0	5	0

The preceding bills of costs are taken from bills duly taxed, with the loan of
which the author was favoured by several solicitors. Many other bills of costs in
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